

**THE SUBJECT OF TORTURE: RHETORICAL INVESTIGATIONS OF DETENTION  
AND INTERROGATION POLICY IN THE GLOBAL WAR ON TERRORISM**

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# **THE SUBJECT OF TORTURE: RHETORICAL INVESTIGATIONS OF DETENTION AND INTERROGATION POLICY IN THE GLOBAL WAR ON TERRORISM**

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University of Pittsburgh, 2013

The term “torture” typically evokes images of physically brutal violence. Coercive interrogation techniques used in the Global War on Terrorism, however, tend not to correspond with this image. These techniques, sometimes called “no-touch” torture, can dismantle an individual’s sense-making and relational faculties without overt violation of the body. Critics who assume that torture is primarily physical violence often characterize contemporary techniques as less-than or other-than torture. Such views reinforce moral and legal vocabularies that do not grasp the most relevant features of the new interrogation paradigm. This dissertation develops an alternative vocabulary better suited to address the subject of contemporary torture. The study begins with an examination of the creation of “unlawful enemy combatant status” and the suspension of Geneva Convention protections for suspected terrorists. It shows how the Bush administration used official rhetoric to produce a new subject position defined as without the rights of either civilian detainees or military prisoners of war. The dissertation then turns to a close reading and critique of the language of the federal statute prohibiting torture. It argues that the definition of the term “torture” in 18 U.S.C. § 2340 implicitly permits “no-touch” torture and creates a sphere of impunity around U.S. interrogators’ preferred techniques. The following chapter focuses on the supermax detention cell, which has become an essential component of the

new detention and interrogation paradigm. It argues that these high-tech sensory and communicative deprivation facilities allow military personnel to produce conditions tantamount to torture without the interpersonal interaction that more traditional forms of torture require. Next, the dissertation examines the use of hunger striking as a means of resistance to these detention and interrogation procedures and develops an analysis of transformative political rhetoric in hostile environments. Finally, the study addresses the experience of beauty as a means of recovery and renewal in the midst of world-unmaking violence.

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## 1. INTRODUCTION

Because human beings are embodied and have the capacity to speak, they can be tortured. Perhaps no other practice so intimately links these two most fundamental components of human experience—our bodies and our words. Torture, typically defined as the infliction of pain in order to obtain information or a confession, evokes a model of a fundamental communicative relationship. Because the interrogator cannot see into the interior world of the other, a mediator, pain, is required. A person unwilling to speak remains a locked box. We have access to each other's bodies but not minds. And so, the body is pierced, twisted, seared, and strangled until it is made to speak. Torture, in this view, can be seen as a negotiated transaction in which the body is released in exchange for the word.

Torture involves basic aspects of the human condition—our corporeality, our capacity to feel pain, the inevitable conflict between our multiple and often incommensurable commitments. It is therefore tempting to view torture as a universal, trans-historical phenomenon. However, although violence and purposeful cruelty may be universal, torture is not. Specific forms of torture emerge within specific political and juridical contexts; and they rely on historically situated conceptions of subjectivity and experience, without which the means and the motives for these practices would be unintelligible.<sup>1</sup> Criteria for legal and moral judgments that were developed to address an old paradigm are inadequate to grasp the structure and effects of new

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<sup>1</sup> See Michel Foucault, "Truth and Juridical Forms," *Social Identities* 2 (1996): 327-342.



forms of violence.<sup>2</sup> As such, techniques that do not conform to the picture evoked by the word “torture” and the descriptive and critical vocabularies that that picture entails cannot be recognized as such. Likewise, those who wish to critique these forms of violence, including those on whom the techniques have been applied, may lack an appropriate vocabulary with which to articulate their claims.<sup>3</sup>

In the light of this state of affairs, this dissertation contends that a new torture paradigm has emerged. This new paradigm entails a historically significant transformation of the subject of torture. While older torture techniques are characterized by their use of physical violence, the newer techniques, sometimes called “no-touch” torture, can dismantle the individual’s sense-making and relational faculties without overt violation of the body. This dissertation argues that new techniques used during the Global War on Terrorism rely on a new understanding of the structure of human experience and enact a new conception of how a person may be recognized within the discourses of domestic and international law. Most analyses of contemporary detention and interrogation policies, however, have been shaped by moral and legal vocabularies that do not grasp the most relevant features of this new paradigm. Accordingly, the principal goal of this dissertation is to develop an alternative vocabulary, better suited to address the subject of contemporary torture.

The term “torture” almost inevitably conjures images of grotesque physical violence. To utter the word is to evoke the spectacle of twisted bodies, seared fleshed, splintered bone, a

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<sup>2</sup> On the political and ethical consequences of using old vocabularies to describe new phenomena, see Stanley Deetz, “Reclaiming the Subject Matter as a Guide to Mutual Understanding,” *Communication Quarterly* 38 (1990): 226-243.

<sup>3</sup> See Jean-Francois Lyotard, *Just Gaming*, (Minneapolis: University of Minnesota Press, 1985); and John Sloop and James P. McDaniel, eds. *Judgment Calls: Rhetoric, Politics, and Indeterminacy*, (Boulder: Westview Press, 1998).

medieval inferno of corporeal suffering. Coercive interrogation techniques that have been used in the Global War on Terrorism, however, do not correspond with this basic image. Alfred McCoy was among the first to have identified this new paradigm, which he describes as “the first real revolution in the cruel science of pain in centuries.”<sup>4</sup> McCoy has shown how researchers have combined insights from a wide array of academic disciplines in order to develop a new approach to coercive interrogation—a method that can induce “dependency, debility, and dread,” without requiring overtly violent contact with the body.<sup>5</sup> This method does not conform to the typical image of torture as severe physical brutality, and in many cases do not require direct physical contact between interrogator and detainee. Nonetheless, techniques such as sensory deprivation, “stress and duress” postures, sleep deprivation, dietary manipulation, white noise, culturally and personally specific forms of humiliation, and other “no touch” torture techniques have emerged as powerful weapons in the Global War on Terrorism.

Academic and vernacular public assessments of these techniques remain, as Wittgenstein might say, held captive by a “picture” of torture that does not adequately portray the current paradigm.<sup>6</sup> Officials have claimed that such procedures, when administered dispassionately under the supervision of medical professionals, can facilitate safe and timely intelligence gathering. In this model, interrogators play the role of technicians of a scientifically grounded

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<sup>4</sup> Alfred McCoy, “Mind Maze: The CIA’s Pursuit of Psychological Torture,” in *The United States and Torture: Interrogation, Incarceration, and Abuse*, p. 30. While I am indebted to McCoy’s work on “no touch” torture, I contest his description of these techniques as “psychological.” Chapter three of this dissertation develops an explicit critique the “psychological” vocabulary for describing contemporary torture.

<sup>5</sup> On dependency, debility, and dread, see Physicians for Human Rights, “Aiding Torture: Health Professionals’ Ethics and Human Rights Violations Revealed In the May 2004 CIA Inspector General’s Report,” August 2009, 3.

<sup>6</sup> “A picture held us captive. And we could not get outside it, for it lay in our language and language seemed to repeat it to us inexorably.” Ludwig Wittgenstein, *Philosophical Investigations*, (Oxford: Blackwell Publishing, 2009), 53.

enterprise whose goal is the “educement of information.”<sup>7</sup> The model assumes that subjects make rational choices about costs and benefits of withholding or divulging information, and interrogators can compel truthful speech through the careful manipulation of forces. In this view, “enhanced interrogation” procedures seek to maximize information transmission while minimizing physical damage to the subject.

This dissertation challenges these assumptions about coercive interrogation and the underlying theory of communication on which they depend. It contends that contemporary interrogators rely on an understanding of language and human experience that is fundamentally different from the “information-transmission” model assumed by both critics and advocates of coercive interrogation. It argues that analyses of detention and interrogation policies that view the individual as a “pain-feeling body” and view speech as an instrumental tool for communicating facts fail to grasp both the means and motives associated with contemporary “no touch” torture. The new techniques break with the model of the individual as a rational “communicator” and adopt the broader conception of the human being as a “symbol-using animal,” in Kenneth Burke’s terms. From this perspective, human beings are uniquely receptive to and ultimately dependent on language—as Gadamer claims, “Language is not just one of [the hu]man’s possessions in the world; rather, on it depends the fact that [the hu]man has a *world* at all.”<sup>8</sup> Adopting this broader view of the relationship between language and experience, interrogators have developed techniques that attack a person’s sense-making and meaning-making capacities while avoiding legal, moral, and practical problems associated with physical brutality. The dissertation argues that a critically viable assessment of this new approach to

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<sup>7</sup> *Educing Information: Interrogation--Science and Art: Foundations for the Future: Phase 1 Report* (Washington, DC: Center for Strategic Intelligence Research, National Defense Intelligence College).

<sup>8</sup> Hans-Georg Gadamer, *Truth and Method*, (New York: Continuum, 1989), 443.

torture requires that we abandon the common understanding of human beings as either rational individuals for whom language serves as a tool for information exchange or as pain-feeling bodies whose distinguishing quality is their capacity to be victimized. The new techniques warrant a new critical vocabulary better suited to address the contemporary subject of torture.

\* \* \*

In order to develop such a vocabulary, this dissertation draws upon the rhetorical tradition, which provides the most developed understanding of the relationship between language and embodied experience. John Poulakos has argued that a “rhetorical orientation” to the world advances an “anthropocentric” view of knowledge and experience. This view

situates man amidst fellow human beings and construes him as a spring of insight and resourcefulness, serving necessity and pursuing pleasure in the face of changing appearances and trying circumstances. Effectively, this view [has] granted validity to human inventiveness, promoted faith in progress, and valued achievement in the arts. On a parallel line, it [has] stipulated the condition of limited and incomplete knowledge, that is, the condition of *doxa* as well as the factors that shape it, e.g., individual sense-perception, and collective common sense. At the heart of the rhetorical orientation [lies] the human capacity to create in and through language interested visions of order and to share them with others.<sup>9</sup>

By contrast, philosophical, theological, and scientific worldviews generally tend to reject this “rhetorical orientation,” in which human beings are seen as primarily the authors and addressees of language. When such views gain prominence, rhetoric is typically either denigrated as a

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<sup>9</sup> John Poulakos, “From the Depths of Rhetoric: The Emergence of Aesthetics as a Discipline,” *Philosophy & Rhetoric* 40 (2007): 337.

distortion of otherwise pure language or begrudgingly tolerated as a necessary evil useful for making allegedly non-discursive goods, such as ideas, facts, truth, justice, and power, more palatable.

However, from time to time an alternative view, affirming the centrality of language to experience, emerges. The work of Kenneth Burke, for whom rhetoric is at play “wherever there is ‘meaning,’” stands as one such moment of rhetorical affirmation.<sup>10</sup> Heidegger, likewise, affirms a fundamental rhetorical insight when he finds that “language speaks” (prior to any given individual speaking language).<sup>11</sup> This insight reiterates the ancient sophist Gorgias’ claim that “*logos* is not evocative of the external, but the external becomes the revealer of *logos*.”<sup>12</sup> Nietzsche, for his part, claims that “language is rhetoric,” and that there is “no unrhetorical ‘naturalness’ of language to which one could appeal.”<sup>13</sup> Burke also contests the typical understanding of language as a tool for grasping or reflecting non-discursive things, claiming that, “things are the signs for words.”<sup>14</sup> All these theorists suggest that rhetoric can be seen as way of understanding and engaging with the world-disclosive properties of language.<sup>15</sup>

This rhetorical orientation offers an alternative to the common notion of communication as a means of “information exchange.” John Durham Peters has shown how this latter model of “communication” emerged in the modern era as “an apparent answer to the painful division

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<sup>10</sup> Kenneth Burke, *A Rhetoric of Motives*, (Berkeley: University of California, 1969), 172.

<sup>11</sup> Martin Heidegger, “Language,” in *Poetry, Language, Thought*, (New York: Harper Collins, 1971).

<sup>12</sup> Herman Diels and Walther Kranz eds., *The Older Sophists*, (Indianapolis: Hackett Publishing Company, 2001), 46.

<sup>13</sup> Friedrich Nietzsche, *Friedrich Nietzsche on Rhetoric and Language*, Sander L. Gilman, Carole Blair, and David J. Parent, eds. (New York: Oxford University Press, 1989), 21.

<sup>14</sup> Kenneth Burke, “What are the Signs of What?” in *Language as Symbolic Action: Essays in Life, Literature, and Method* (Berkeley: University of California Press, 1966), 361.

<sup>15</sup> On “world-disclosive” rhetoric, see Ronald Greene, “The Aesthetic Turn and the Rhetorical Perspective on Argumentation,” *Argumentation and Advocacy* 35 (1998): 19-29.

between self and other, private and public, and inner thought and outer world.”<sup>16</sup> He notes that “humans were anciently dubbed the ‘speaking animal’ by Aristotle,” however, “only since the late nineteenth century have we defined ourselves in terms of our ability to *communicate* with each other.”<sup>17</sup> “Communication,” Peters argues, “is a registry of modern longings. The term evokes a utopia where nothing is misunderstood, hearts are open, and expression is uninhibited.” In this view, language serves as a means of grasping non-discursive truths and mediating the relationship between otherwise autonomous individuals.

The communication-as-information-exchange model relies on a set of “commonsense” assumptions that may be briefly enumerated here. First, this communication model assumes a fundamental distinction between language (described as a system of signs), and the non-linguistic world (comprised of some combination of objects, ideas, concepts, matter, etc).<sup>18</sup> Second, the model assumes that individual units of language (symbols) can be made to correspond with individual units in the non-linguistic world (whether those units are called ideas or things). Third, the model assumes that by means of these symbols, individual speakers can represent mental ideas and objective things to other individuals who share a common symbol system. In this perspective, “communication is only possible between two persons used to the same ...forms, trained to code and decode a meaning by using the same key.”<sup>19</sup> These assumptions form a typical view of communicative interaction, whereby:

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<sup>16</sup> John Durham Peters, *Speaking into the Air: A History of the Idea of Communication* (Chicago: Chicago University Press, 1999), 2.

<sup>17</sup> *Ibid.*, 1.

<sup>18</sup> See John Stewart, *Language as Articulate Contact*, (Albany: SUNY University Press, 1995). In Stewart’s words: Most theories of language assume “that there is an ontological distinction between two realms or worlds, typically the linguistic and the nonlinguistic and that language establishes a relationship between them,” 103.

<sup>19</sup> Michel Serres, “Platonic Dialogue,” quoted in Alphonso Lingis, *The Community of Those who Have Nothing in Common*, (Bloomington: Indiana University Press, 1994), 89.

Whatever happens must happen either inside the subject or outside him [or her]. Anything which is not physical is inside him [or her]. Thus, communication through making use of physical signs, tries to bridge the gap between two psychological selves by reconstructing subjective experiences of an external world.<sup>20</sup>

In sum, most typical theories of communication presume an ontological distinction between two worlds, mediated by language, which can be used as a tool to represent the “objective” and express the “subjective.”

The rhetorical orientation, by contrast, holds that language is intimately involved in the formation of experience, not something added to an otherwise wordless “reality.” Speech is therefore not primarily “a matter of transporting information and experiences from the interior of one subject to the interior of the other one.”<sup>21</sup> Speech, instead, is an engagement with *logos*, seen in this view as the “the paradigmatic site of everyday coping.”<sup>22</sup> A person is neither an autonomous rational agent nor a passive recipient of raw sensory data; subjective “feelings” and “ideas,” as well as objective “things,” are *outcomes* or *accomplishments* of language rather than its points of origin. Persons, then, should be understood primarily as the authors and addressees of discourse, rather than as “*cogito*[s] employing reason to connect and disconnect with objects.”<sup>23</sup>

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<sup>20</sup> Stanley Deetz, “Conceptualizing Human Understanding: Gadamer’s Hermeneutics and American Communication Studies” *Communication Quarterly* 26 (1978): 17. Deetz, it should be noted, is *critical* of this account of communication; the quotation here is *not* representative of his own view of communication.

<sup>21</sup> Martin Heidegger, *History of the Concept of Time: Prolegomena*, (Bloomington: Indiana University Press), 263.

<sup>22</sup> Stewart, *Language as Articulate Contact*, 110.

<sup>23</sup> *Ibid*, 109.

Most scholarly assessments of contemporary torture, however, have accepted the common model of communication as “transmission” and have therefore tended to view torture as a means of information exchange. Michael Ignatieff, for example, defines torture as, “the deliberate infliction of physical cruelty and pain *in order to extract information*.”<sup>24</sup> Richard Posner claims that “Torture *is* often an effective method of eliciting true information,” and that “[t]he greater the potential value of the information sought to be elicited by an interrogation, the greater should be the amount of coercion deemed permitted by the Constitution.”<sup>25</sup> Alan Dershowitz has made the case that officials should, with court supervision, be permitted to use certain torture techniques to procure information from suspected terrorists:

[J]udges would require compelling evidence... that the suspect had information needed to prevent an imminent terrorist attack.... [The suspect would be] granted immunity, told that he was now compelled to testify, threatened with imprisonment if he refuses to do so, and given the option of providing the requested information. Only if he refused to do what he was legally compelled to do—provide necessary information which could not incriminate him because of the immunity—would he be threatened with torture. Knowing that such a threat was authorized by the law, he might well provide the information. If he still refused to, he would be subjected to judicially monitored physical measures designed to cause excruciating pain without leaving any lasting damage.<sup>26</sup>

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<sup>24</sup> Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, (Princeton: Princeton University Press), 136. (emphasis added).

<sup>25</sup> Richard Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency*, (Oxford: Oxford University Press, 2006), 81 and 80. (emphasis in original)

<sup>26</sup> Alan Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*, (New Haven: Yale University Press: 2002), 158-159.



Torture, in these accounts, is a species of communicative interaction—a tool in a broad arsenal of techniques one may employ in order to compel an individual to share the otherwise secret contents of his or her mind.

Those who accept this basic model of torture as a communicative exchange typically argue about the moral or legal permissibility of some specific technique by weighing the magnitude of pain it causes against the urgency and accuracy of the information that can be obtained. Ignatieff, for example, argues that the use of physically brutal interrogation methods must be unconditionally banned by “liberal states” because of their commitment to “reduce, to a minimum, the coercion and violence necessary to the maintenance of order among free peoples.”<sup>27</sup> However, he also claims that certain forms of coercive interrogation, including isolation, sleep deprivation, sensory distortion, and “permanent light or permanent darkness” may be justified if they can generate information used to prevent a “greater evil” from occurring.<sup>28</sup> In his analysis, these techniques amount to “permissible duress” that “stops short of absolute degradation of an interrogation subject.”<sup>29</sup> “Enhanced interrogation” thus appears, in this view, to be a moderate, humane *alternative* to torture.

Jean Bethke Elshtain argues that the failure to “disaggregate” the term torture has obscured the moral and legal assessment of contemporary interrogation policies.<sup>30</sup> She holds that bodily violation is the most significant factor in determining whether a given technique should be called “torture.” Elshtain states that “pulling out fingernails; grinding the teeth down or pulling teeth...raping men or women; burning breasts; crucifying,” all qualify as torture. She

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<sup>27</sup> Ignatieff, *The Lesser Evil*, 15.

<sup>28</sup> *Ibid*, 138.

<sup>29</sup> *Ibid*, 141.

<sup>30</sup> Jean Bethke Elshtain, “Reflection on the Problem of ‘Dirty Hands,’” in *Torture: A Collection*, ed. Sanford Levinson, (New York: Oxford, 2004).

distinguishes these methods from a set of techniques that includes sensory deprivation, solitary confinement, sleep deprivation, and self-inflicted pain by means of “stress postures.” Elshtain argues that the latter “may, with regret, be used” by interrogators seeking urgent information, and claims that those who would unconditionally ban such techniques are guilty of committing a “form of moral laziness.”<sup>31</sup> Like Ignatieff, Dershowitz, and Posner, Elshtain finds these non-traditional techniques to be “lighter” than physically brutal methods and, therefore, justifiable in cases in which the need for information is great.

In sum, these contemporary critics share the view that torture is, in essence, a form of communication—a special case of the general project of making public the private stuff of a suspect’s mind. More precisely, torture appears in this light to be a *solution* to the fundamental problems associated with interpersonal communication: the privacy of the self, the frustrated desire to share thoughts, and the risk of miscommunication and distorted data.<sup>32</sup> Critics who view torture as a means of procuring *information* implicitly adopt a model of communication as the “sharing of thoughts,” and “bridging interiorities.”<sup>33</sup> Torture appears to be an extraordinary way to address the ordinary problem of information exchange.

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This dissertation contests the model of torture as a form of information exchange. It argues that, in the light of a rhetorical orientation to the world, a number of common assumptions about torture must be reexamined. First, if one rejects the proposition that language is only a tool for information exchange, then the typical account of the motives for torture is no longer persuasive.

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<sup>31</sup> Ibid, 87-88.

<sup>32</sup> Peters, *Speaking into the Air*.

<sup>33</sup> See John Durham Peters, “Sharing thoughts or Responding to Otherness? Reply to Logue and Miller,” *Critical Studies in Mass Communication* 13.4 (1996): 373-380.

Each of the academic assessments discussed above assumes that a coercive interrogation can be used in limited, emergency situations to access objective facts about the world contained within the mind of another. Former U.S. Undersecretary of Defense for Policy, Douglas Feith articulated this position bluntly, stating, “Intelligence is in the heads of these people. We need to extract it.”<sup>34</sup> However, contrary to Feith’s claim, an interrogator cannot “extract intelligence” from the head of a suspect—he or she can only listen to the words that the suspect speaks. Given that words do not simply “correspond” with a non-discursive world, the challenge of verifying a given bit of “intelligence” must be addressed.<sup>35</sup> The “intelligence extraction” model assumes that interrogators can apprehend the right person and know with some certainty that he or she has the urgent information. The detainee must be able to remember the bit of information and recognize this bit as the relevant answer to the interrogator’s question. He or she must be able to clearly and accurately articulate the intelligence in unambiguous terms and in a language the interrogator understands. This bit of information must in fact correspond to the “outside” world and this fact must be verified. The interrogator must be convinced that the detainee’s statement is sincere and he or she has told all that he or she knows. Lastly, the interrogator must know that this intelligence could not have been obtained without torture or coercive interrogations. However, because speech cannot be reduced to purely rational utterances that unambiguously

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<sup>34</sup> As quoted in Philippe Sands, *Torture Team: Rumsfeld’s Memo and the Betrayal of American Values* (New York: Palgrave Macmillan, 2008), 188.

<sup>35</sup> See Thomas Hilde, “Information and the Torture Imagination,” *South Central Review* 24.1 (2007): 183-201. Hilde argues that the challenge of verification renders arguments for the limited use of torture for information incoherent, because an interrogator can only know whether procured information is true in one of two ways: information can be verified if the interrogator already possesses a wide range of knowledge about the situation; in that case, however, the act of torture would have provided no new information, and would instead only have confirmed what is already known. Or, the interrogator can check the information against other intelligence procured through torture; but in that case, torture cannot be a limited, exceptional event but must be practiced widely and systematically.

correspond to non-discursive reality, this “intelligence extraction” model of coercive interrogation is flawed.

Second, if one acknowledges that human experience is dependent on and shaped by *logos*, the typical account of the means of torture must be revised. Many view “no-touch” techniques as a “lesser evil” than physically brutal interrogation methods. Such assessments rely on the dubious assumption that minds and bodies are real but that language, along with the “projects” and experiences it sustains, is immaterial.<sup>36</sup> Some see the no-touch paradigm as evidence of a more moderate and humane approach to interrogation—something that distinguishes Western democracies from those who operate without modern legal or moral constraints. However, if the most relevant feature of a human being is not his or her ability to feel pain but his or her ability to participate meaningfully in the discursive world, then the “no touch” paradigm is by no means more “moderate” or “constrained” than physically brutal techniques. Physical contact with the body of another is not a necessary condition for violence and violation to occur. Techniques associated with the “no touch torture” paradigm—sensory deprivation, isolation, self-inflicted pain (through “stress and duress” postures), white noise, and cultural/religious defilement—can disrupt a person’s ability to speak and be spoken by language in the sense described above. From this perspective, physical brutality appears as one approach to torture among others, and critics may be misled by the assumption that torture is essentially a tool for getting into the mind by way of the body.

Third, if communicative interaction is fundamental to one’s humanity, it follows that under certain conditions, long-term isolation and communicative deprivation could threaten

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<sup>36</sup> The claim here is not that bodies are “unreal.” Rather, my claim is that by conceiving of the body as a “container” for immaterial “ideas” or “information, most analyses of torture misjudge techniques that seem to do less damage to the body-as-object.

personhood. This means that the common assumption that torture requires a torturer must be reexamined. New high-tech detention cells, used in the Global War on Terrorism, give military personnel unprecedented control over detainees' sensory and communicative experiences—allowing officials to create a world almost completely devoid of human interaction. Given that human experience is at least in part an *outcome* of interpersonal interaction, a detention cell of this kind might be best described as a weapon, rather than as a “place” where torture may “take place.” However, because it is commonly assumed that torture entails specific acts of violence committed by specific individual agents, the policy of detaining persons in communicative deprivation prisons has not been adequately assessed.<sup>37</sup> The perspective developed in this dissertation, which assumes communicative interaction is the means by which one “has a world at all,” provides a critical vantage point from which to address these aspects of contemporary detention policy and to widen the scope of the term “torture” to include acts that do not require interpersonal contact between a detainee and an interrogator.

Fourth, the acknowledgement that language does not simply “correspond” with an “outside” world complicates the current debate about the legal status of U.S. detention and interrogation policies. Both critics and advocates of these policies have generally tended to share the assumption that the language of law can and should correspond with a set of non-discursive entities (e.g. “justice” or the “reality of warfare”). For example, by 2002, the Bush administration had decided to designate all persons captured by Coalition forces as “unlawful enemy combatants,” a hybrid legal status without precedent in international law. In a White House memorandum, Bush justifies the introduction of this new legal category by claiming that the

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<sup>37</sup> One exception, however, is Lisa Guenther, “Subjects Without a World? An Husserlian Analysis of Supermax Detention,” *Human Studies* 34.3 (2011): 257-276.

established terminology of international law (which defines all wartime detainees as either Prisoners of War or Civilians) no longer reflects the state of contemporary warfare:

[T]he war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm—ushered in not by us, but by terrorists—requires new thinking in the law of war....<sup>38</sup>

In a January 2002 memorandum, then-White House Counsel Alberto Gonzales claims that, “the war against terrorism is a new kind of war.” In his view, the U.S. led Global War on Terrorism has introduced a new kind of combat that “renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions....”<sup>39</sup> Critics, in turn, have disputed the validity of the new term “unlawful enemy combatant” without challenging the basic assumption that policy-language can and should reflect “reality.” Such critics claim that, “*there is no* intermediate status” [between civilian and P.O.W.] to which the term “unlawful enemy combatant” might legitimately refer.<sup>40</sup> Others argue that the new detention and interrogation policies open up a realm of “utter lawlessness” equivalent to a “legal black hole.”<sup>41</sup> That is, both the administration and its critics have tended to rely on the assumption that legal categories ought to be evaluated based on their degree of correspondence with “reality.” They simply disagree about which terms correspond with the world most accurately. This dissertation,

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<sup>38</sup> George W. Bush, “Memorandum for the Vice President: Humane Treatment of al Qaeda and Taliban Detainees,” February 7, 2002.

<sup>39</sup> Alberto Gonzales, “Memorandum for the President,” January 25, 2002.

<sup>40</sup> See International Committee of the Red Cross, “Commentary: *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*,” 1958.

<sup>41</sup> Johan Steyn, “Guantanamo Bay: The Legal Black Hole,” *The International and Comparative Law Quarterly*, 53, 1, (2004): 1-15.

however, breaks from this narrow “correspondence” theory of language. It argues that new legal terms such as “unlawful enemy combatant status” neither conform nor fail to conform to “reality;” rather, such terms *transform* reality in part by *deforming* the existing legal lexicon and *reforming* the array of subject-positions that persons may legally occupy. Rejecting the view that terminology is primarily reactive to and descriptive of an “outside” world, the dissertation develops a theory of the material force of legal language.

Fifth, adopting a view of language and experience informed by the rhetorical tradition better addresses the various ways those subjected to contemporary detention and interrogation procedures have sought to resist their effects. Those who define torture as physical violence used to obtain information typically assume that refusing to speak or provide “intelligence” is the only form of resistance worthy of the name.<sup>42</sup> In this view, silence is associated with strength and speech with weakness. By contrast, this dissertation contends that resistance to contemporary torture techniques primarily entails maintaining or regaining the capacity to speak. This view follows from the acknowledgment that human experience is not a silent and solitary accomplishment, but rather arises in the course of one’s engagement with various discourse communities. This dissertation examines a variety of ways that persons subject to torture have sought to regain sanity and connection to others—in each case it is speech and not silence that is lifesaving.

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<sup>42</sup> As John Beverley notes, a narrative about heroic resistance to physical torture may have the effect of “confirming a hierarchy of social (and often masculine) value that reasserts the elite/subaltern distinction; it simply places torturer and tortured on the same elite plane of that hierarchy.” John Beverley, “The Question of Torture: Spanish Decadence and Our Own,” *boundary 2* 34, 3 (2007): 200.

This introduction has briefly addressed how the rhetorical tradition can illuminate the phenomenon of contemporary torture. The dissertation, however, also contends that the study of torture can help inform the theory and practice of rhetoric. First, by focusing on political speech that has disrupted and destabilized existing institutions, this dissertation broadens the current view of the material force of rhetoric. It is now widely accepted among rhetoricians that the study of rhetoric need not be limited to the inventory and analysis of various persuasive techniques. Theorists and critics acknowledge that language can be a “world disclosive” force capable at times of transforming the legal and political categories available to addressees. These theorists and critics, however, have generally tended to focus on cases in which official discourse “constitutes” new subject-positions and new collective identities.<sup>43</sup> This view is due in part to the assumption that contemporary rhetoric should be understood within the context of a “postmodern” condition characterized by fragmentation and the demise of “grand narratives;” the challenge of political speech in this context is to produce coherence and consensus.<sup>44</sup> This dissertation, however, examines political speech that has had the opposite effect: disrupting consensus and rendering previously stable institutions and identity positions problematic. It contends that a balanced view of rhetoric should include an acknowledgement of both the destructive and constructive results of language.

Second, by addressing the speech of those who have been subject to torture and *incommunicado* detention, this dissertation challenges an array of disciplinary assumptions about speakers and audiences. The study of rhetoric has traditionally been concerned with the speech

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<sup>43</sup> See for example, Maurice Charland, “Constitutive Rhetoric: The Case of the Peuple Quebecois,” *Quarterly Journal of Speech* 73, no. 2 (1987): 133–150.

<sup>44</sup> See for example, Michael Calvin McGee, “Text, Context, and the Fragmentation of Contemporary Culture,” *Western Journal of Speech Communication* 54.3 (1990): 274-289.



of people in positions of power and influence.<sup>45</sup> Such studies often take a number of basic elements of the rhetorical situation for granted. For instance, rhetoricians typically assume that a given speaker has the right to speak in a public forum and that the audience will acknowledge this right, that the audience will find the speaker intelligible, and that the speaker and audience share a common language and a common sense of what is appropriate for the occasion. This dissertation examines the possibility of rhetoric in hostile environments, where none of these things can be taken for granted. For military detainees attempting to address their captors, the primary rhetorical accomplishment must be to provisionally create the conditions in which their voices might be heard. Such individuals may initially be considered unintelligible or unable to produce politically or personally significant testimony. In that case, detainees and military personnel cannot presume but must invent a forum and create a common language through which to speak and be heard. This dissertation thus develops a theory of communicative interaction that can account for cases in which the recognition of the speaker, audience, and situation is an outcome rather than a precondition for rhetoric.

Third, in response to rhetoricians' traditional disciplinary concern with persuasive speaking, this dissertation advocates a renewed attention to transformative acts of listening. Focusing on the experience of torture and indefinite detention amplifies the broader sense that human beings are recipients, and not just authors, of discourse. We are constantly affected by language, which has the power to produce inhabitable worlds and, also, to destroy them. Heidegger's claim that "language speaks" suggests that we are the addressees of *logos*. Aristotle's definition of rhetoric as a *theoretical* art, likewise, suggests that listening to or

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<sup>45</sup> For an analysis and critique of this trend in rhetorical criticism, see Bradford Vivian, *Being Made Strange: Rhetoric Beyond Representation*, (Albany: State University of New York, 2004).

observing potential avenues of appeal must come prior to the act of speech.<sup>46</sup> A skillful rhetorician, then, is not just an eloquent, persuasive speaker; he or she must first be capable of creative listening. The theory of listening developed in this dissertation provides a complement to the work of Calvin Schrag and others who have developed a rhetoric-centered conception of ethics concerned with the obligation to produce “fitting responses” to what one hears.<sup>47</sup>

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Each chapter of this dissertation draws from and refigures the vocabulary of the rhetorical tradition in order to better understand the contemporary subject of torture. Chapter two examines the legal memoranda and executive orders that helped to establish the Bush administration’s detention and interrogation policy. It shows how official discourse disrupted the terminology of the international laws of war in order to produce a new subject position (unlawful enemy combatant status), defined as without the rights of either civilian detainees or military prisoners of war and therefore subject to forms of violence previously prohibited by law. Chapter three develops a critique of the federal definition of torture, arguing that the law creates a sphere of impunity for those who adopt the “no-touch” torture paradigm. Chapter four examines the material, architectural component of the new detention and interrogation paradigm: the supermax detention cell. It argues that these sensory and communication deprivation cells are best described not as “places” but as weapons of war capable of automating “no touch” torture without requiring interpersonal interaction between interrogators and detainees. Chapter five examines one attempt to resist these detention and interrogation procedures—the 2005

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<sup>46</sup> See Andrea Nightingale, *Spectacles of Truth in Classical Greek Philosophy: Theoria in its Cultural Context*, (New York: Cambridge University Press, 2004).

<sup>47</sup> Calvin O. Schrag, *Communicative Praxis and the Space of Subjectivity*, (Bloomington: Indiana University Press, 1986).

Guantanamo Bay hunger strike, which reveals some of the possibilities and limitations of transformative political rhetoric in hostile environments. Chapter six addresses the possibility of recovery and renewal in the midst of violence. It argues that in conditions of deprivation and abuse, the experience of beauty can be lifesaving.

## **2. DECONSTITUTIVE RHETORIC: “UNLAWFUL ENEMY COMBATANT” STATUS AND THE DESTRUCTION OF LEGAL PERSONHOOD**

At the start of the Global War on Terrorism, the Bush administration produced a series of legal memoranda and executive orders that fundamentally transformed the U.S. policy on detention and interrogation.<sup>1</sup> In these legal documents and official statements, the administration articulated a new subject position (unlawful enemy combatant status) and new norms of conduct that were previously prohibited under federal and international law. Many critics have argued that these texts should be dismissed as opportunistic and, ultimately, flawed legal judgments. Supporters counter by arguing that the memoranda and orders should be seen as part of a good faith effort to understand and address the realities of a new kind of warfare and a new kind of enemy unaccounted for by existing theories.<sup>2</sup> Few, though, have read these texts as rhetorical artifacts whose efficacy is due in part to the unique power of words to organize political force and undermine established norms and institutions.

This chapter examines the use of official state discourse to materially transform the legal and political status of suspected terrorists and expose them to violence that would otherwise be prohibited by domestic and international law. The chapter identifies a set of discursive tactics designed to produce what I call “deconstitutive rhetoric,” which can be defined as rhetorical action that undermines or dismantles the existing legal and/or political status of its addressees.

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<sup>1</sup> See Karen J Greenberg, Joshua L Dratel, and Jeffrey S Grossman, *The Enemy Combatant Papers* (Cambridge: Cambridge University Press, 2008).

<sup>2</sup> See John Yoo, *War by Other Means: An Insider's Account of the War on Terror*, 1st ed. (New York: Atlantic Monthly Press, 2006); and John Yoo, *Crisis and Command: The History of Executive Power from George Washington to George W. Bush* (New York: Kaplan Pub., 2009).

The first section argues that contemporary rhetoricians have theorized the relationship between rhetoric and political identity in an unbalanced way, promoting neo-Isocratean ideals about the constructive power of language and comparatively under-acknowledging rhetoric's destructive power. The chapter then addresses this imbalance by introducing a new term, deconstitutive rhetoric, which I present as a complement to Charland's notion of constitutive rhetoric. The chapter then turns to a close analysis of the use of deconstitutive rhetoric in a series of legal opinions and official statements that shaped the Bush administration's detention and interrogation policy. First, it examines the decision to legally re-define the nation of Afghanistan as a "failed state." Then, it addresses the emergence of "unlawful enemy combatant status," a legal category paradoxically defined as without basic rights under the international laws of war. The chapter concludes with an analysis of the so-called "enhanced interrogation techniques," which I argue have sought to deconstitute detainees not just legally and politically but *existentially* as well.

## 2.1 THE NEO-ISOCRATEAN BIAS IN CONTEMPORARY RHETORICAL CRITICISM

In this section, I situate my key term, deconstitutive rhetoric, within a broader disciplinary debate about the uses of rhetoric. The section begins with the claim that although rhetoric can be used for constructive or destructive purposes, contemporary rhetorical theorists have tended to highlight the creative use of language and have under-emphasized the alternative. The section culminates in an examination of Charland's theory of constitutive rhetoric and an explanation of how my term supplements this theory.

The ancient Greeks were well aware of the disruptive potential of rhetoric. As Paul Ricoeur has noted, “[o]riginally, speech was a weapon...a weapon called upon to gain victory in battles where the decision hung on the spoken word.”<sup>1</sup> The sophists’ experiments with rhetoric were, in some ways, an attempt to exercise some control over language and “harness its dangerous power by means of a special technique.”<sup>2</sup> Plato’s critique of sophistical rhetoric was motivated in part by the experience of the destructive power of artful speech. Indeed, the imprisonment and death of Socrates may be seen as one poignant example of this kind of rhetorical power. Plato’s response sought to formulate a new kind of discourse, a language purified of its potential to deceive, distort, and corrupt.<sup>3</sup> Aristotle’s treatise on discourse partly absolved rhetoric of these crimes and he famously defined rhetoric more neutrally as the capacity to *observe* the available means of persuasion. However, he nonetheless recognized the combative use of language, drawing the analogy between defending oneself from physical and verbal assaults.<sup>4</sup> Aristotle and Plato thus both acknowledged the violent potential of rhetoric, recognizing that, because of human beings’ unique capacity for and vulnerability to language, those able to use words artfully can do so to pursue disruptive and destructive ends.

While Plato and Aristotle acknowledge the destructive potential of rhetoric, Gorgias seems to have most fully embraced the violent side of *logos*. In his *Encomium of Helen*, he famously called speech “a powerful lord,” and associated *logos* with rape, robbery, bewitchment, and abduction. John Poulakos has argued that Gorgias, and the sophists more generally, saw *logos* primarily as a “centrifugal” force, able to disrupt the status quo, undermine existing certainties,

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<sup>1</sup> Paul Ricoeur, *The Rule of Metaphor: Multi-disciplinary Studies of the Creation of Meaning in Language* (Toronto: University of Toronto Press, 1977), 10.

<sup>2</sup> Edwin Black, “The Second Persona,” *Quarterly Journal of Speech* (1970): 109–119.

<sup>3</sup> Note that Socratic dialectic was, nonetheless, associated with a kind of violence. See for example *The Meno* 80c, in which Socrates’ discourse is compared to the sting of a stingray.

<sup>4</sup> Aristotle, *Rhetoric*, 1355b.

seduce and deceive people who, by their very nature, are vulnerable to the powers of language.<sup>5</sup> As Poulakos notes, this aspect of rhetoric was primarily critical— “able to create a crisis by casting doubt on and dissolving the established realities” and able to “undermine what is actual and thus create new possibilities.”<sup>6</sup>

By contrast, Isocrates developed a vision of rhetoric as a constructive force. His ideal rhetorician would harness the “centripetal” force of logos—its ability to unify and pacify disparate factions. Logos, he argued, is the distinguishing advantage human beings have over other animals; it is the means by which communities are founded, organized, and made stable.<sup>7</sup> Poulakos has noted that Isocrates lived to experience “wars between and strife within the city-states, one revolt after another, intellectual disorientation, and political chaos.” To counter this destructive and disordered political culture, Isocrates sought a program of “rhetorical reform.”<sup>8</sup> The power of rhetoric could, he thought, be “put in the service of sociopolitical coherence and order.”<sup>9</sup> Isocrates aimed to craft a vision of rhetoric able to “turn dissensus into consensus, and the expressions of contrary alternatives into the search for the one master discourse that could effect a strong unity among a divided people.”<sup>10</sup>

Thus, the Sophists and Isocrates offer two very different conceptions of the *logos*. “[T]he former highlights the dynastic power of language to impose, to undermine, to violate, to deceive, and to distort; the latter underlines its hegemonic capacity to collect, to unify, to lead, and to

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<sup>5</sup> John Poulakos, “Rhetoric and Civic Education: From the Sophists to Isocrates,” in *Isocrates and Civic Education*, edited by Takis Poulakos and David J. Depew, (Austin: University of Texas Press, 2004).

<sup>6</sup> John Poulakos, *Sophistical Rhetoric in Classical Greece* (Columbia, S.C.: University of South Carolina Press, 1995), 142.

<sup>7</sup> See *To Nicoles*

<sup>8</sup> Poulakos, *Sophistical Rhetoric*, 134.

<sup>9</sup> Ibid.

facilitate.”<sup>11</sup> Whereas Gorgias amplified the critical elements of logos, Isocratean rhetoric sought to amplify the constructive power of language and its ability to “shape reality...to build necessary institutions and create human communities held together by common beliefs.”<sup>12</sup> And, as Poulakos has suggested, these distinct conceptions of rhetoric were largely shaped by the historical circumstances in which they emerged. Facing a relatively homogenous society, the sophists sought a mode of critical rhetoric able to disrupt established conventions. Facing a relatively fragmented and incoherent political scene, Isocrates sought a mode of rhetoric able to inspire concord and consensus.

While the ancient Greeks thus acknowledged both the creative and destructive capacities of language use, recent rhetorical theorists have tended to amplify the constructive and deemphasize the disruptive potential of rhetorical power. Indeed, while Edwin Black and others have largely succeeded in charting a disciplinary path beyond what he called “neo-Aristotelian” criticism, a neo-Isocratean strain in rhetorical theory remains under-acknowledged.<sup>13</sup> Contemporary rhetoricians seem, by and large, to share Isocrates’ conception of logos as a unifying force, capable of creating the audiences that orators hope to address. Black himself helped to establish this vision of rhetoric, when he argued that critics should focus on the way that an oration helps to organize and articulate an implied audience—personae that the actual addressees might occupy as they are moved by the text. One principal function of rhetoric, in his view, is to produce identity positions that an otherwise fragmented and incoherent set of addressees can come to occupy. “The critic can see in the auditor implied by a discourse a

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid, 142

<sup>13</sup> Edwin Black, *Rhetorical Criticism: A Study in Method* (University of Wisconsin Press, 1978).



model of what the rhetor would have his real auditor become.”<sup>14</sup> That is, in Black’s view, rhetoric is in large measure a “centripetal” force, able to constitute political identities.

Michael Calvin McGee’s debt to Isocrates is even more explicit.<sup>15</sup> From his early work on the rhetorical production of “the People”<sup>16</sup> through his conception of the ideograph as a means by which “[e]ach member of the community is socialized...as a prerequisite for ‘belonging’ to the society,”<sup>17</sup> to his later claim that role of the critic is to assemble fragments in order to “invent a text suitable for criticism,”<sup>18</sup> McGee’s work amplifies the productive side of rhetoric. He argued that, “the analysis of rhetorical documents should not turn inward, to an appreciation of persuasive, manipulative techniques, but outward to *functions* of rhetoric.”<sup>19</sup> The function of rhetoric, he claimed, was in part ideological—calling individuals to occupy subject-positions and to identify with the norms, *doxa*, and descriptive vocabularies of the community.<sup>20</sup> McGee explicitly associated this view of ideology with Isocrates’ conception of rhetorical *praxis* and Althusser’s theory of interpellation (by which individuals are “hailed” to take on subject positions that are legible and intelligible).<sup>21</sup>

Across the broad span of his work, McGee consistently viewed the world as essentially comprised of individuals (or, in his later formulation, textual fragments) that must be “seduced

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<sup>14</sup> Black, “The Second Persona,” 113.

<sup>15</sup> See for example his essays, “Choosing *A poros*: Reflections on how to implicate Isocrates in Liberal theory,” [http://mcgeefragments.net/OLD/Choosing\\_Poros.html](http://mcgeefragments.net/OLD/Choosing_Poros.html) and “Isocrates: A Parent of Rhetorical and Cultural Studies” <http://mcgeefragments.net/OLD/isocrate.htm>

<sup>16</sup> Michael Calvin McGee, “In Search of the People: A Rhetorical Alternative,” *Quarterly Journal of Speech* 61, no. 3 (1975): 235–249.

<sup>17</sup> Michael Calvin McGee, “The ‘Ideograph’: A Link Between Rhetoric and Ideology,” *Quarterly Journal of Speech* 66, no. 1 (1980): 15.

<sup>18</sup> Michael Calvin McGee, “Text, Context, and the Fragmentation of Contemporary Culture,” *Western Journal of Speech Communication* 54, no. 3 (Summer 1990): 288.

<sup>19</sup> McGee, “In Search of the People: A Rhetorical Alternative,” 248.

<sup>20</sup> See, McGee “Choosing *A poros*”

<sup>21</sup> McGee, “Choosing *A poros*”

into abandoning their individuality” and persuaded to “take up an artificial identity.”<sup>22</sup> He saw rhetorical *praxis* as an essential part of the “social process and the human condition”—the means by which otherwise isolated individuals could come to participate in collective experience.<sup>23</sup> Given a world of fragmented, disparate entities, the interesting question for McGee was how anything like a coherent, broadly affirmed political collectivity could be created. He therefore comparatively ignored cases of the opposite kind—in which a rhetorician encountered a relatively coherent conception of “a people” and sought to disrupt or actively *destroy it*. In this sense, he can be said to have highlighted the Isocratean/centripetal force of rhetoric and under-emphasized the Gorgian/centrifugal alternative.

Like his mentor, McGee, Maurice Charland extends this broad neo-Isocratean project and coined the term “constitutive rhetoric” to define a species of rhetorical action capable of materially transforming (rather than simply *persuading*) addressees.<sup>24</sup> In his landmark 1987 essay, “Constitutive Rhetoric: The case of the *Peuple Quebecois*,” Charland drew upon Kenneth Burke’s notion of identification<sup>25</sup> and Althusser’s theory of interpellation<sup>26</sup> to describe the discursive creation of the *peuple quebecois* as a material effect of a rhetorical process. He noted that in order for persuasion to take place, individuals must first be able to recognize themselves as having been addressed by persuasive speech. His theory asked rhetoricians to examine these prior acts by which audiences are constituted and made recognizable to themselves and each other. As Charland writes, “If it is easier to praise Athens before Athenians than before

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<sup>22</sup> McGee, “In Search of the People: A Rhetorical Alternative,” 242.

<sup>23</sup> *Ibid.*

<sup>24</sup> Maurice Charland, “Constitutive Rhetoric: The Case of the *Peuple Quebecois*,” *Quarterly Journal of Speech* 73, no. 2 (1987): 133–150.

<sup>25</sup> Kenneth Burke, *A Rhetoric of Motives* (Berkeley: University of California Press, 1969).

<sup>26</sup> Louis Althusser, “Ideology and Ideological State Apparatuses” in *Lenin and Philosophy, and Other Essays* (New York: Monthly Review Press, 2001).

Laecedemonians, we should ask how those in Athens come to experience themselves as Athenians. Indeed, a rhetoric to Athenians in praise of Athens would be relatively insignificant compared to a rhetoric that constitutes Athenians as such.”<sup>27</sup> Likewise, Charland argues, a speech in praise of Quebecois identity depends upon the prior emergence and continued symbolic stability of the category “Quebecois.” Charland made the case that the creation and endurance of political subject-positions are best described as rhetorical accomplishments.

Charland offers a close, critical reading of a set of public speech texts that seemed to break with the typical model of rhetoric as an art of persuasion. That typical (i.e. neo-Aristotelian) model, “prefigures the relation between a speaker and audience as a form of persuasion or goal oriented activity” and “reduces the question of rhetorical effectivity to the epistemological-ethical implications of a speaker’s success or failure to accomplish his/her persuasive goal.”<sup>28</sup> In the texts that Charland studied, however, rhetoric functions not as a set of persuasive or manipulative techniques, but rather as a force capable of materially transforming the subject-positions available to its addressees. In order to account for rhetorical action of this kind, Charland developed a model of rhetoric focused not on persuasion per se but “on the role of public discourse in the process of world disclosure.”<sup>29</sup> In such a model, both audience and situation “emerge as the effects of rhetorical practices.”<sup>30</sup> And, while rhetoric can be used for destructive/obscuring purposes as well as for creative/disclosive ends, Charland’s theory focused almost exclusively on the latter, centripetal capacities of artful language.

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<sup>27</sup> Charland, “Constitutive Rhetoric,” 134.

<sup>28</sup> Ronald Greene, “The Aesthetic Turn and the Rhetorical Perspective on Argumentation,” *Argumentation and Advocacy* 35, no. 1 (1998): 19.

<sup>29</sup> *Ibid.*, 19.

<sup>30</sup> *Ibid.*

In sum, Charland's "Constitutive Rhetoric" can be seen as part of a broader neo-Isocratean turn in contemporary rhetorical theory. Like Black, McGee, and others, Charland's theory helps to explain how a rhetorician might produce a relatively coherent political identity from amidst multiple, incoherent, fragmented particulars. Rhetoric in this view is most powerful when it seeks to create the subject-positions that a speaker calls his or her addressees to occupy. However, the present chapter is concerned with a very different rhetorical situation, for which neo-Isocratean theories of rhetoric are not well suited. I argue that, rather than seeking to *create* a legally recognized subject-position from fragments, the Bush administration sought to *disrupt* and *undermine* a relatively clear and coherent consensus regarding the legal and political identity of combatant detainees in an international war. My claim is that Bush and his legal team employed a "centrifugal" rhetorical conception more akin to the sophistic mode described above. Whereas Charland focused on a centripetal use of language, which he called "constitutive rhetoric," I believe that the Bush administration's rhetoric of detention and interrogation warrants an analysis of the centrifugal use of language that I call "deconstitutive rhetoric."

## 2.2 DECONSTITUTIVE RHETORIC

In the previous section, I have noted a neo-Isocratean bias in contemporary rhetorical theory that has led critics to focus on the constructive power of language and underemphasize the disruptive force of language. In this section, I introduce the key term, "deconstitutive rhetoric," as a counterstatement intended to draw attention to the under-examined, destructive force of certain kinds of language use. My notion of deconstitutive rhetoric owes much to Charland's theory and shares many of the basic assumptions of his work. Like the theory of "constitutive rhetoric," my

understanding of deconstitutive rhetoric has emerged in response to a set of public speech texts that did in fact materially transform their addressees. Charland sought to explain the textual production of a new political identity (Quebecois). Likewise, the texts examined in this chapter produced new ways of organizing statehood (“failed state” status) and political subjectivity (“unlawful enemy combatant” status). Like Charland’s work, the present chapter seeks to develop an alternative to the “rhetoric as persuasion” paradigm. This is in part because, as with the constitution of the *peuple quebécois*, the texts I examine in this chapter are significant not because they were persuasive per se, but because they disclosed new legalistic categories with real material consequences. However, I believe that for both practical and theoretical reasons, Charland’s theory of constitutive rhetoric did not anticipate and does not fully explain the kind of materially transformative rhetoric used in the Global War on Terrorism.

I offer three specific reasons for introducing the term “deconstitutive rhetoric” as a complement to the constitutive model of rhetoric. First, Charland’s constitutive theory brilliantly extends Burke’s insights about the centrality of “identification” to the rhetorical process, but he fails to fully acknowledge the other side of Burke’s dialectical couple—Division. Burke’s understanding of the “nature of language” holds that identification is “compensatory to division.”<sup>31</sup> Focusing on identification exclusively, Charland’s theory offers a somewhat unbalanced model of rhetoric grounded in an incomplete assessment of the “nature of language and its enactment.”<sup>32</sup> A fuller view would acknowledge that “speech is a powerful lord,” capable of producing division and strife as well as unity and stability.<sup>33</sup> As this chapter will later show,

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<sup>31</sup> Burke, *A Rhetoric of Motives*, 22.

<sup>32</sup> Charland, “Constitutive Rhetoric,” 133.

<sup>33</sup> To be clear, in his case study of the constitution of *Quebécois* identity, Charland did acknowledge a rhetoric of division, articulated by French-speaking Canadians who opposed Quebec sovereignty and held that the idea of a Quebec *peuple* was a “semantic fraud. Charland called this a “counter-argument” (a term

state officials during the Global War on Terrorism used language to transform the material status of subjects with the explicit goal of shattering (rather than constituting) established personal and political identities. A broader consideration of rhetoric beyond the “persuasion” paradigm should include an acknowledgement of the destructive uses of language. My term, deconstitutive rhetoric, is intended to highlight a species of official discourse operating outside the “logic of influence” but whose primary effect is the destruction, rather than the constitution, of personal and political identity.

Second, Charland’s theory emphasizes the way rhetoric can inspire self-identification with fictive/ideological narratives; however, he comparatively underemphasizes rhetorical effects that are not dependent on an audience’s consent. Constitutive rhetoric, in Charland’s view, requires the participation of individuals willing to “enact their ideology and reconstitute their material world in its image.”<sup>34</sup> The texts he analyzes refer to a people’s “awakening of self-consciousness” and “awareness of its collective destiny.” Self-recognition, in this model, is the necessary precondition for persuasion and subsequent action: “To enter into the...rhetorical narrative is to identify with Black’s second persona. It is the process of recognizing oneself as the subject in a text....to be captured in its structure and in its production of meaning.”<sup>35</sup> Now, clearly, in many cases political identity is dependent upon an individual’s willingness to self-recognize as a participant in a broad ideological narrative. In other cases, however, the rhetorical effect of transformative language is not dependent upon the addressee’s willingness to identify with the ideological narrative implied by the text. For example, this chapter will later show that

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with greater affinity to traditional views of rhetoric as persuasion) the goal of which was to convince an audience not to identify as *Quebécois*. This “counter-argument” was quite different from speech, such as the examples examined later in this chapter, that seeks to materially *deconstitute* an addressee (rather than simply *influence* an audience to dis-identify with a group or idea).

<sup>34</sup> Charland, “Constitutive Rhetoric,” 143.

<sup>35</sup> Ibid.

the creation of “unlawful enemy combatant” status by post-9/11 official discourse did not require any ideological self-recognition by individuals “captured” by this rhetorical description. The term “deconstitutive rhetoric” is intended to highlight a species of official discourse able to produce subject-positions (e.g. a new category of legal status) that do not require ideological self-recognition by addressees.

Third, although Charland’s article makes little reference to the classical rhetorical tradition, his theory of constitutive rhetoric implicitly takes one side of an ancient debate about the nature of language. As I have argued, by focusing on the role of rhetoric in the formation of collective political identity, Charland’s theory has much in common with an Isocratean conception of rhetoric. Again, like Isocrates, Charland conceives of rhetoric as a predominately *centripetal* force, highlighting the capacity of language to gather diverse fragments to form a coherent unity. However, he comparatively ignores the *centrifugal* force of rhetoric. The view of rhetoric as a centrifugal force assumes that language can be used to disrupt seemingly stable hegemonic articulations and shatter previously coherent wholes. A balanced view of rhetoric should include both of these basic features of language.

In sum, Charland’s neo-Isocratean theory of constitutive rhetoric remains incomplete because he consistently emphasizes one side of a series of dialectical pairs. Language can be used both creatively and destructively; it can unite particulars and divide unities; it can seduce listeners into participation and it can overcome their resistance with force. However, Charland’s theory of constitutive rhetoric highlights the first element of each of these pairs and implicitly

denies the destructive, divisive, and violent dimensions of rhetoric.<sup>36</sup> It therefore cannot account for cases—such as I present in the next section of this chapter— in which public discourse operating outside the traditional paradigm of “persuasive speech” disrupts and threatens to collapse the inhabited subject positions of its addressees, without their consent or ideological participation, and leaves them exposed without the shelter of a coherent narrative “dwelling place.”<sup>37</sup>

In what follows, I examine a series of cases that demonstrate the use of this materially transformative deconstitutive rhetoric within the current Global War on Terrorism. Seeking to avoid constraints regarding the treatment of captured enemies, the Bush administration produced a series of policy statements and memoranda that effectively dismantled legal categories previously understood to be essential to the international laws of warfare. I examine the use of the rhetoric of deconstitution in three related cases. First, I show how the administration used deconstitutive rhetoric when it declared the nation of Afghanistan to be a “failed state.” Second, I show how the administration used deconstitutive rhetoric when it decided to apply the category of “unlawful enemy combatant” status to all captured belligerents and suspected terrorists. Third, I show how so-called “enhanced interrogation techniques” functioned to deconstitute detainees not just politically and legally but existentially as well.

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<sup>36</sup> Plato, of course, held that a rhetorician should be skilled in both synthesis and analysis; and the key rhetorical principle of *dissoi logoi*, likewise, suggests that if language can be used creatively it must also be possible to use it destructively.

<sup>37</sup> Charland, quoting Walter Fisher, sees constitutive rhetoric as able to “give order to human experience and ... induce others to *dwell in [it]* to establish ways of living in common, in communion in which there is a sanction for the story that constitutes one’s life.”



## 2.3 FAILED STATE STATUS

In this section, I examine one of the first uses of deconstitutive rhetoric by the Bush administration during the Global War on Terrorism—the decision to declare Afghanistan a “failed state.” In January 2002, the administration’s Office of Legal Council (OLC) issued a series of memoranda dealing with the legal status of captured combatants. The memos argue that neither Taliban soldiers nor al-Qaeda fighters should be granted POW status under the Geneva Conventions if captured. Under the Geneva Conventions, POW status is granted to those deemed to be “privileged belligerents,” meaning that their acts of warfare are legal under international law. Because their belligerency is “privileged,” POWs are said to possess a number of rights. First, the detention of a POW must be preventative (i.e. in order to keep the enemy soldier from returning to the battlefield) and not punitive (because as a privileged belligerent, they were authorized to kill or otherwise use force against enemy soldiers). Further, a POW is only required to give the captor his or her name, rank, date of birth, and identification number.<sup>38</sup> Any attempt by the captor to coerce information or confession from a POW constitutes a crime. Regarding the status of al-Qaeda members, the OLC’s initial assessment was relatively non-controversial:

Geneva III does not apply to a non-State actor such as the al Qaeda terrorist organization. Al Qaeda is not a State. It is a non-governmental terrorist organization composed of members from many nations, with ongoing operations in

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<sup>38</sup>Geneva Convention Relative to the Treatment of Prisoners of War, article 17.

dozens of nations. Non-governmental organizations cannot be parties to any of the international agreements here covering the laws of war.”<sup>39</sup>

Therefore, the members of al-Qaeda would not be considered to be lawful belligerents and the conflict with them would not legally amount to international warfare.<sup>40</sup>

The decision to deny POW status to Taliban soldiers, however, was significantly more complex. The Taliban were a political entity located within Afghanistan, a nation recognized as a High Contracting Party to the Geneva Conventions. Moreover, by many accounts, the Taliban “constituted the *de facto* government of Afghanistan since their capture of Kabul, the capital, in September 1996.”<sup>41</sup> Therefore, Taliban fighters seemed to some observers to meet the criterion of being “members of the armed forces of a Party to the conflict,” as described in Article 4 of the Third Geneva Convention Relative to the Treatment of Prisoners of War.<sup>42</sup> Even if one refused to recognize the Taliban as the legitimate government of Afghanistan, their soldiers could at least gain POW status as “members of militias or volunteer corps forming part of [the] armed forces” of Afghanistan.<sup>43</sup>

Seeking to avoid the requirement to treat Taliban fighters as “privileged belligerents,” the Bush administration’s Office of Legal Council introduced a novel argument. In a series of memoranda, Justice Department lawyers claimed that the President had the authority to declare

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<sup>39</sup> Jay Bybee, “Memorandum for Alberto R. Gonzales Counsel to the President, and William J. Haynes II General Counsel for the Department of Defense, Re: Application of Treaties and Laws to Al Qaeda and Taliban Detainees”, January 22, 2002, 9.

<sup>40</sup> Ibid.

<sup>41</sup> David D. Caron, “If Afghanistan Has Failed, Then Afghanistan Is Dead: ‘Failed States’ and the Inappropriate Substitution of Legal Conclusion for Political Description,” in *The Torture Debate in America*, ed. Karen J. Greenberg (Cambridge University Press, 2005), 218. See also, Larry P. Goodson, *Afghanistan’s Endless War : State Failure, Regional Politics, and the Rise of the Taliban* (Seattle: University of Washington Press, 2001).

<sup>42</sup> Geneva Convention Relative to the Treatment of Prisoners of War, Article 4A (1).

<sup>43</sup> Ibid

the nation of Afghanistan to be a “failed state” and therefore no longer able to act as a High Contracting Party to the Geneva Conventions. In their January 9, 2002 memo, John Yoo and Robert Delahunty argue that, prior to the US invasion of Afghanistan, that country was “without the attributes of statehood necessary to continue as a party to the Geneva Conventions.”<sup>44</sup> A second memo, written by Jay Bybee cites the opinions of political scientists, government officials, and other “experts” attesting to the fact that Afghanistan “failed some, and perhaps all, of the ordinary tests of statehood and...was effectively stateless for the relevant period of the conflict.”<sup>45</sup> On this basis, the memo advises the President to “exercise his constitutional power to suspend our Geneva III obligations toward Afghanistan.”<sup>46</sup> In a third memo, White House Legal Counsel Alberto Gonzales informs the President that “the OLC’s interpretation of this legal issue is definitive” and stands as an official interpretation of the law for the Executive Branch.<sup>47</sup> The official U.S. position at that time was that a material transformation had taken place: at some point, prior to the invasion of Afghanistan, that state had ceased to be.<sup>48</sup>

My claim here is that the decision to officially declare Afghanistan to be a “failed state” is an act of deconstitutive rhetoric. The administration framed its action within an epistemological vocabulary—referring to failures to meet “ordinary tests of statehood.” Such a vocabulary obscures the sense in which the executive-level designation of Afghanistan as a failed state is not a mere description, but rather functions as a “centrifugal” force disruptive to the existing international legal paradigm. “Failed state” is a term used by political scientists to describe a state whose central government is unable to provide basic services for its population. Prior to its

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<sup>44</sup> John Yoo and Robert J. Delahunty, “Memorandum for William J. Haynes II General Counsel, Department of Defense, January 9, 2002”, January 9, 2002, 14.

<sup>45</sup> Bybee, “ January 22, 2002 Memorandum,” 22.

<sup>46</sup> Ibid.

<sup>47</sup> Alberto Gonzales, “Memorandum to President George W. Bush”, January 25, 2002, 1.

<sup>48</sup> Caron, “If Afghanistan Has Failed, Then Afghanistan Is Dead.”

use in these memoranda, the term “failed state” had no significance in international law. As Caron has noted, the “failed state” memos:

take the social science description of “failed states” (without acknowledging its roots in political science) and conflate that political science description with the legal possibility of a state that ceases to exist. It is as though one conflated a social science description of homeless people as spiritually dead with the legal conclusion that such people are dead.<sup>49</sup>

The introduction of the term “failed state” into the discourse of international law thus produces something akin to the “centrifugal” force of deconstitutive rhetoric. Declaring Afghanistan to be a legally “failed state” pulls apart the established legal paradigm (in which a nation-state is presumed to have an enduring legal and political substance) and unravels treaty obligations and diplomatic commitments. And whereas constitutive rhetoric requires the participation and self-recognition of its addressees, deconstitutive rhetoric of this kind uses the *force* of language to impose its will.

The sense that language can be used as a means of force (rather than a means of persuasion or mode of inquiry) is an explicit part of the legal reasoning behind the “failed state” declaration. In a letter sent on February 1, 2002, then-Attorney General John Ashcroft offered President Bush a brief lesson in the rhetorical power of official deconstitutive discourse. He explains that

[i]f a determination is made that Afghanistan was a failed state...and not a party to the treaty, various legal risks of liability, litigation, and criminal prosecution are minimized. This is a result of the Supreme Court’s opinion in *Clark v. Allen*

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<sup>49</sup> Ibid.

providing that when a President determines that a treaty does not apply, his determination is fully discretionary and will not be reviewed by the federal courts.”<sup>50</sup>

Ashcroft’s official recommendation as Attorney General is based in part on the power of the deconstitutive rhetorical act that grants the President the ability to materially transform the legal status quo.

In the same letter, Ashcroft offers Bush a second rhetorical option—rather than *determining* that Afghanistan was a “failed state” he can continue to recognize the statehood of Afghanistan but *interpret* the Taliban to be unlawful combatants not subject to POW status:

If...the Taliban are interpreted to be unlawful combatants not subject to the treaty’s protections, *Clark v. Allen* does not accord American officials the same protection from legal consequences. In cases of Presidential interpretation of treaties which are confessed to apply, courts occasionally refuse to defer to Presidential interpretation.<sup>51</sup>

As a rhetorical act with less force than “determination,” an *interpretation* of the Geneva Conventions that found the Taliban to be outside of the scope of its protections would, he argues, open avenues for legal challenge—including the possibility of the judicially mandated release of detainees. Again, the Attorney General’s claim is that that the rhetorical force of the President’s speech has material, legal and political effects.

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<sup>50</sup> John Ashcroft, “Letter to the President”, February 1, 2002 (emphasis in original).

<sup>51</sup> *Ibid*, (emphasis in original).

Apparently, the President initially took the first of Ashcroft's options, officially *determining* that Afghanistan had lost its statehood and thereby absolved the US of treaty obligations with that nation.<sup>52</sup> This, in effect, is an act of deconstitutive rhetoric—speech that is not primarily “persuasive,” does not require identificatory self-recognition by addressees, and functions centrifugally to render the existing legal paradigm null and void. However, the State Department strongly opposed that decision and the Justice Department's underlying legal rationale.<sup>53</sup> Secretary of State Colin Powell eventually convinced the President to rescind the declaration that Afghanistan was a “failed state.” In Bush's official Executive Order regarding the legal status of enemy detainees (signed on February 7, 2002), the text explicitly recognizes the statehood of Afghanistan. However, the language of the Order is explicit about the rhetorical force of the President's words. He officially affirms that as President he possesses “the authority under the Constitution to suspend Geneva as between the United States and Afghanistan,” although he has decided “decline to exercise that authority at this time.”<sup>54</sup> Moreover, when the Order officially declares that Taliban detainees will not receive POW status despite the recognized statehood of Afghanistan, the decision is framed not as an *interpretation* of the Geneva Conventions but as a *determination*—“Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva.”<sup>55</sup>

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<sup>52</sup> Caron, “If Afghanistan Has Failed, Then Afghanistan Is Dead.”

<sup>53</sup> Ibid.

<sup>54</sup> George W. Bush, *Executive Order: Humane Treatment of al Qaeda and Taliban Detainees*, February 7, 2002.

<sup>55</sup> Ibid

My claim here is that these official “determinations” are examples of deconstitutive rhetoric in action. Official rhetoric of this kind does not simply describe or interpret the status quo. Instead, it materially transforms the status of its addressees. By determining that al-Qaeda and the Taliban would not receive POW status, policies previously considered to be in violation of the laws of war (e.g. incommunicado detention and coercive interrogation) appear permissible. These memos and declarations thus demonstrate how language can act as a centrifugal force able to disrupt established legal paradigms, materially transform addressees, and expose individuals to the kind of violence prohibited by law.

## 2.4 UNLAWFUL ENEMY COMBATANT STATUS

In the previous section, I examined legal memoranda detailing the rationale behind the decision to deny Taliban fighters POW status. Initially, the Office of Legal Council and others at the Department of Justice advocated that the President determine Afghanistan to be a “failed state” with which the US no longer maintained treaty obligations—an opinion that Bush initially adopted but then rescinded. I also showed how this legal reasoning used the political science term “failed state” as a centrifugal force by integrating it into the vocabulary of international law wherein it had no recognized meaning. In sum, I showed how the OLC advocated the use of the kind of discourse I have described as deconstitutive rhetoric—using the force of language to rhetorically undermine the status quo and render addressees unrecognizable within the existing legal paradigm.

In this section I examine another important example of deconstitutive rhetoric used in the early days of the Global War on Terrorism—the deployment of the term “unlawful enemy

combatants” as a legal description of all suspected belligerents captured and detained by U.S. forces. As the scope of the conflict spread beyond Afghanistan, U.S. and Coalition forces found it necessary to detain and interrogate individuals (including U.S. citizens) who, because of their citizenship and political status, were legally protected from preventative detention and coerced interrogation. In order to maintain harsh interrogation and detention policies while protecting officials from War Crimes prosecution and the judicially mandated release of detainees, the Bush administration turned again to the materially transformative power of deconstitutive rhetoric—introducing the term “unlawful enemy combatant” into the discourse of international law, thereby undermining the legal protections guaranteed to detainees by the Geneva Conventions and other international human rights laws.

In order to recognize the novelty of the Bush administration’s use of the term “unlawful enemy combatant” it is necessary to understand the legal paradigm that they sought to dismantle. As the International Committee of the Red Cross states in their 1958 Commentary to the Fourth Geneva Convention,

[e]very person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, [or] a civilian covered by the Fourth Convention . . . . *There is no* intermediate status; nobody in enemy hands can be outside the law.<sup>56</sup>

In the world of international human rights law prior to the Global War on Terrorism, every individual in a war zone can be categorized within one of two mutually exclusive subject-positions: soldier or civilian.

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<sup>56</sup> International Committee of the Red Cross, “Commentary: *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*,” 1958.



The distinction between civilians and military prisoners of war is based, in part, on the belief that certain words, when properly spoken, can materially transform the people to whom they are addressed—a transformation that is perhaps most apparent when a nation produces an official declaration of war.<sup>57</sup> A declaration of war creates a category of people – soldiers – who may legally kill and be killed regardless of guilt or innocence. Here the neo-Isocratean view of rhetoric, discussed earlier in this chapter, is quite appropriate. A declaration of war is neither simply *persuasive* speech, nor is it a description of an extra-discursive state of affairs. Rather, it is “constitutive rhetoric”—speech that has the power to draw individuals toward shared identity positions and common goals. By virtue of a declaration of war, an individual recognized by the state as a soldier becomes a new kind of person.

Within the discourse of the international laws of warfare, however, the warzone in which these newly interpellated soldiers operate is by no means a lawless space in which anything goes. Rather, if warfare is to proceed lawfully, the state must maintain its monopoly of violence and its representatives must act within the moral and legal spheres produced by the words of the state. The soldier must and may only kill those who have been properly transformed by the declaration of war into enemies—a soldier who explicitly targets a civilian commits a criminal act of murder. Likewise, citizens of either nation who have not personally been constituted as soldiers are not authorized to kill—though my nation is at war, I remain a civilian and if I were to kill an Afghan fighter this too would be a criminal act of murder. That is, though I may have been *persuaded*, I was not officially, materially *constituted* as a lawful combatant.

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<sup>57</sup> For an excellent analysis of the transformative power of declarations of war, see Elaine Scarry, “War and the Social Contract,” *University of Pennsylvania Law Review*, May 1999: 1257-1316.

The transformative power of declarations of war also accounts for the protections granted to legally recognized prisoners of war (POW). Within the paradigm of the international laws of war, an enemy soldier must not be treated as a criminal since the acts of violence he or she has committed are authorized by the words of the official declaration (and thus do not amount to crimes for which the individual is *personally* culpable). By laying down arms and accepting the new subject-position, “prisoner of war,” the individual ceases to occupy the category of “combatant” and so may no longer be legally killed. For this reason, the detention of POWs is, in principle, non-punitive. Its purpose is simply to eliminate the threat of that specific combatant until the period of hostility is officially concluded. In sum, international laws governing warfare between states strive to provide some protection for those authorized by official discourse to commit acts of violence. The right to kill coupled with the ability to transform one’s status through surrender amount to a modern rebuttal of the ancient claim that *inter arma enim leges*.

In the case of a captured civilian, detained as an “unprivileged belligerent,” the situation is somewhat different. Because these individuals are not legally recognized soldiers, their acts of belligerency are crimes for which they may be tried and punished by the domestic law of the detaining nation. Unlike a soldier, an unprivileged belligerent is not granted the legal right to kill in exchange for his or her exposure to the violence of warfare. If an unprivileged belligerent is found to have committed homicide or other crimes, he or she may be subject to legal sanctions including imprisonment or, in some cases, execution. However, such individuals are not utterly without rights under the law. At minimum, they are legally protected under the Fourth Geneva Convention against “violence to life and person;” outrages upon personal dignity; the passing of sentences without the “judicial guarantees which are recognized as indispensable by civilized

peoples.”<sup>58</sup> And, the determination that individuals are “unprivileged belligerents” must be made on an individual basis, rather than in mass. The Third Geneva Convention requires that if there is any doubt about the status of a detainee, he or she must be treated as a POW until a determination of their status is made by a “competent tribunal.”<sup>59</sup> In sum, the recognized paradigm at the start of the Global War on Terrorism was defined by a relatively clear distinction between soldiers and civilians, each with a set of rights and legal protections from violence during detention.<sup>60</sup>

Faced with this relatively coherent set of institutional norms and rules regarding the detention and interrogation of combatant detainees, the Bush administration deployed a mode of discourse akin to the sophistic, centrifugal rhetoric described above. Bush and his legal team worked to discursively undermine the existing legal framework and create a third kind of subject-position designed to minimize legal constraints and maximize the state’s right to use violence. The result was the production of the “unlawful enemy combatant”—an individual they claimed could be ‘legally’ held outside the law in conditions of deprivation and abuse tantamount to torture. An extensive legal critique of the term “unlawful enemy combatant” is beyond the scope of the present chapter.<sup>61</sup> Rather, my concern is with the rhetorical invention of a term able to act “centrifugally,” disrupting existing legal standards regarding the treatment of

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<sup>58</sup> Geneva Convention relative to the Protection of Civilian Persons in Times of War, Article 3.

<sup>59</sup> Geneva Convention relative to the Treatment of Prisoners of War, Article 5(2).

<sup>60</sup> In fact, the clarity of the distinction between soldier and civilian had been challenged prior to the Global War on Terrorism. The two Additional Protocols to the Geneva Conventions (1977), ratified by 165 nations, sought to extend protections to those participating in modern conflicts unanticipated by the framers of the 1949 Conventions. The U.S. has signed but not ratified those Protocols.

<sup>61</sup> See Peter Berkowitz, *Terrorism, the Laws of War, and the Constitution: Debating the Enemy Combatant Cases*, vol. 537 (Hoover Institution Press, 2005); Jennifer Elsea, *Detention of American Citizens as Enemy Combatants* (New York: Nova Science Publishers, 2008), Peter Jan Honigsberg, *Our Nation Unhinged: The Human Consequences of the War on Terror* (Berkeley: University of California Press, 2009); David Linnan, *Enemy Combatants, Terrorism, and Armed Conflict Law: a Guide to the Issues* (Westport, Conn.: Praeger Security International, 2008).

combatant detainees. Further, I am interested in the use of the term as part of a broader “deconstitutive rhetoric,” the purpose of which was to dismantle individuals’ protections under the law.

As with the term “failed state” considered above, there was no established meaning in international law for the term “unlawful enemy combatant” prior to its use by the Bush administration in the Global War on Terrorism. As Honigsberg has argued:

Enemy combatant sounds like a legal term, but it is not. Enemy combatant has no meaning in international law. The term did not meaningfully exist in American law before the administration introduced it in spring 2002 as a descriptor for the men captured after September 11, 2001. Until then, the universe of combatants, as recognized by the Geneva Conventions and international law, consisted of two categories: lawful combatants—those entitled to prisoner of war (POW) status—and unlawful combatants, who were not so entitled. That is all.<sup>62</sup>

The hybrid third term, “unlawful enemy combatant,” was first used in its post-9/11 context in the decision of *Coalition of Clergy, Lawyers, and Professors v. Bush* (2002), when Ninth Circuit federal district Judge Matz described a group of Guantanamo Bay detainees as “enemy combatants.”<sup>63</sup> Importantly, the criteria for determining whether an individual was an “enemy combatant” were left undefined. The administration quickly capitalized on the initial circulation of this quasi-legal term with no clear referent. The term migrated into official discourse when Jose Padilla and Yasser Hamdi (both U.S. citizens) were designated as “enemy combatants.” Then, in Spring 2002, “enemy combatant” became the official designation of status for all

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<sup>62</sup> Honigsberg, *Our Nation Unhinged*, 15.

<sup>63</sup> *Ibid.*, 82.

detainees of the Global War on Terrorism.<sup>64</sup> Since there was no established precedent for the use of the term and no recognized legal criteria for deciding whether an individual should be considered an “enemy combatant,” the administration could determine combatant status by fiat. And, when the term was finally codified by Congress in the Military Commissions Act (2006), the definition included any person “who before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant....”<sup>65</sup> That is, the congressional legislation retroactively legalized the executive branch’s unilateral designations and offered no criteria for the use of the term.

My claim is that the term “unlawful enemy combatant” should be understood as an example of the Bush administration’s use of deconstitutive rhetoric to undermine and destabilize an established legal paradigm.<sup>66</sup> The use of the term as a blanket designation for all individuals captured and detained in the Global War on Terrorism produces the “centrifugal” effect that I have associated with deconstitutive rhetoric. The term is neither descriptive nor persuasive but instead materially transforms its addressees by rendering incoherent the legal categories under which they would previously have been described. As with the deconstitutive acts I have previously discussed (and unlike constitutive rhetoric), the effect of the term “unlawful enemy combatant” does not require addressees’ self-recognition with the ideological narrative of the text. Instead, language is used here as a means of force able to overcome resistance and

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<sup>64</sup> This, again, is in clear violation of the Geneva Convention regulation that combatant status must be determined on an individual basis and that all individuals must be treated as POWs until such a determination can be made by a competent tribunal.

<sup>65</sup> Military Commissions Act (2006)

<sup>66</sup> A critic employing Charland’s vocabulary might contend that Bush has “constituted” enemy combatant status and would perhaps challenge my emphasis on the “deconstitution” of existing legal categories. I acknowledge a dialectical relationship between constitutive and deconstitutive rhetoric; and I acknowledge that the adoption of the term enemy combatant has required the participation of many interested parties who have found the term acceptable. However, my focus on “deconstitutive” rhetoric highlights the effects of materially transformative official discourse on those, such as suspected terrorists in the Global War on Terrorism, whose self-recognition or “buy-in” is not required.

alternative narratives. Thus, as with “failed state” status and the determination to deny Geneva protections to the Taliban, the development of “unlawful enemy combatant” status stands as an example of deconstitutive rhetoric capable of disrupting existing legal protections, materially transforming addressees, and exposing individuals to violence previously considered unlawful.

## 2.5. FIDELITY AND THE DETAINEE AS SUBJECT-TO-TRUTH

Thus far I have shown how “failed state” status and then “unlawful enemy combatant” status create new subject-positions that expose detainees to interrogation procedures that would normally be prohibited if used on either POWs or civilian “unprivileged belligerents.” I have also shown that the theory of constitutive rhetoric does not adequately describe this process. This is in part because that theory attempts to explain the role of rhetoric in the creation of “normal” citizen-subjects whose self-recognition entails recognition under the law. The outcome of a constitutive act, therefore, is a speaking subject able to identify as a citizen and act in accordance with that political status. My notion of constitutive rhetoric, however, attempts to account for the process by which a subject could become unrecognizable by “normal” law and be rendered politically “speechless.”

In this final section, I show how “unlawful enemy combatant” status has produced subjects who can, through exposure to violence tantamount to torture, be deconstituted not just legally but *existentially*. Whereas previous sections of the chapter dealt with legal changes that have exposed detainees to violence, this section examines the violent interrogation techniques themselves. My argument is that while these techniques are often explicitly described as “intelligence gathering” methods, they are better understood as deconstitutive acts, the effect of

which is to undermine the individual's ideological/identificatory narratives. To some extent, the legal determinations examined above were all means toward this end.

In order to support this argument, I draw on the theory of subjectivity developed by Alain Badiou. In Badiou's view, subjectivity is a fragile, momentary accomplishment sustained by acts of fidelity to a perceived truth.<sup>67</sup> He claims, "there is no abstract Subject.... There is only a particular kind of animal, convoked by certain circumstances to *become* a subject—or rather, to enter into the composing of a subject."<sup>68</sup> In Badiou's terms, a subject comes into being in relation to an event to which he or she must maintain fidelity. An event "compels us to decide a *new* way of being."<sup>69</sup> A subject in Badiou's sense of the term is someone who maintains fidelity to the new way of being produced by the event:

It is clear that under the effect of a loving encounter, if I want to be *really* faithful to it, I must completely rework my ordinary way of 'living' my situation.... After Einstein's texts of 1905, if I am faithful to their radical novelty, I cannot continue to practice physics within its classical framework....<sup>70</sup>

In other words, Subjectivity for Badiou is not equivalent to institutionally organized "subject-positions," nor is it akin to the Cartesian cogito or the "inner" life of the psychological subject. Rather, subjectivity is an outcome of the process of remaining faithful to a perceived truth.

My argument is that Badiou's theory of subjectivity sheds light on the underlying motive for the instances of "deconstitutive" rhetoric analyzed above. I believe that one principal goal of

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<sup>67</sup> My reading of Badiou is drawn predominately from Alain Badiou, *Ethics: An Essay on the Understanding of Evil* (Verso Books, 2001).

<sup>68</sup> *Ibid.*, 46.

<sup>69</sup> *Ibid.*, 41.

<sup>70</sup> *Ibid.*, 42.

the “enhanced interrogation” techniques used in the Global War on Terrorism is to create the conditions under which interrogators can, with impunity, violently disrupt detainees’ capacity to pursue acts of “fidelity” and to thereby deconstitute the individual’s status as a subject-to-truth. This view of subjectivity and the role “interrogation” plays is incompatible with the legal paradigm defined by the international laws of war. And so, the Bush administration felt it necessary to undermine this legal paradigm as a prelude to torture.

At first glance, Badiou’s conception of the subject may seem far removed from the practical domain of detention and interrogation policy. As one interrogation manual described the process, “There is nothing mysterious about interrogation. It consists of no more than obtaining needed information through responses to questions.”<sup>71</sup> Official discourse about interrogation tends to follow this form— describing the subject in commonplace terms as a rational individual able to deliberate about the costs and benefits of withholding or divulging information, and describing interrogators as technicians of a scientific procedure whose only goal is the “educement of information.”<sup>72</sup> However, interrogators also acknowledge another conception of subjectivity that is much closer to Badiou’s sense of that term:

In some instances (e.g., AL Qaeda), the source may be a product of years of fundamentalist religious schooling (e.g., the madrassas), where intense, rote learning has filled students’ minds with selected passages from spiritual texts. In the course of this training, they have embraced the ‘belief’ that their cause is divinely inspired (which can place the interrogator on the side of ‘evil’). The

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<sup>71</sup> Central Intelligence Agency, *KUBARK Counterintelligence Interrogation*, Washington, DC, 1963, 1; available at <http://www.parascope.com/articles/0397/kubark06.htm>.

<sup>72</sup> *Educing Information: Interrogation--science and Art: Foundations for the Future: Phase I Report* (Washington, DC: Center for Strategic Intelligence Research, National Defense Intelligence College).



inability to deconstruct this resistance posture remains a major hurdle in the current war on terrorism.”<sup>73</sup>

In statements such as this, interrogators and administration officials acknowledge a view of the enemy as existentially committed to a perceived truth that is not subject to rational negotiation. In this view, the detainee’s fidelity to violent jihad should be seen as an “unalterable” constitutive feature of his or her being. President Bush describes the enemy this way:

Whatever it's called, this ideology is very different from the religion of Islam. This form of radicalism exploits Islam to serve a violent political vision: the establishment, by terrorism and subversion and insurgency, of a totalitarian empire that denies all political and religious freedom.... In fact, we're not facing a set of grievances that can be soothed and addressed. We're facing a radical ideology with unalterable objectives: to enslave whole nations and intimidate the world.<sup>74</sup>

In such a view, the militant’s adherence to his or her ideology must be broken before anything like “information gathering” can proceed. Clearly, if captured “unlawful enemy combatants” are perceived to be subjects-to-truth in Badiou’s sense, an interrogation ought not to be seen as an occasion for the negotiated exchange of information. Instead, the goal must be to induce a betrayal, the effect of which is to destabilize the detainee’s ability to recognize himself or herself as a subject-to-truth.

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<sup>73</sup> Steven M. Kleinman, “KUBARK Counterintelligence Interrogation Review: Observations of an Interrogator – Lessons Learned and Avenues for Further Research,” in *Educing Information: Interrogation Science and Art*, 117.

<sup>74</sup> George W. Bush, “President Discusses War on Terror at National Endowment for Democracy,” October 6, 2005.

Understanding this motive—the inducement of a “betrayal” by the detainee—helps to explain the use of a diverse set of so-called “interrogation” techniques, authorized for use in the Global War on Terrorism, whose information gathering value seems derivative at best. Consider, for example, the various techniques that have been used to “regress” detainees to pre-verbal states. One interrogation manual describes the process this way:

The purpose of all coercive techniques is to induce psychological regression in the subject by bringing a superior outside force to bear on his will to resist. Regression is basically a loss of autonomy, a reversion to an earlier behavioral level. As the subject regresses, his learned personality traits fall away in reverse chronological order...<sup>75</sup>

The International Committee of the Red Cross found evidence that military interrogators employed an array of techniques—including denying access to toilets—used to induce this kind of “regression.” Commenting on the report, Physicians for Human Rights notes that:

the chief aim...is to cause psychological stress through humiliation, induced dependency, loss of autonomy, and regression to an infantile state. Like all such techniques, especially when combined with others of the ‘DDD’ type (debility-dependency-dread), these are cumulative and lead to short and long-term debilitation. ...[T]he torturers go even further, returning the detainee to pre-toilet-training levels.<sup>76</sup>

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<sup>75</sup> Central Intelligence Agency, *Human Resource Exploitation Training Manual--1983*, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB27/02-01.htm>.

<sup>76</sup> Physicians for Human Rights, “Aiding Torture: Health Professionals’ Ethics and Human Rights Violations Revealed In the May 2004 CIA Inspector General’s Report,” August 2009, 3.

The goal of these techniques, it seems, is to undermine the basic framework of the individual's adult personality—an existential deconstitution.

The attempt to deconstitute the individual (rather than merely to “educate information”) also helps to explain the use of techniques designed to attack the detainee's faith in Islam. The GTMO SOP (Standard Operating Procedures) manual listed a set of “Cultural Considerations” specific to the treatment of Muslim detainees (Appendix A). Although framed there as a set of taboos not to be violated, in practice the list became a blueprint for a set of culturally specific torture tactics. For example, a *Washington Post* article reports that female interrogators at Guantánamo violated Muslim taboos regarding sex and contact with women. Detainees claim that, “women rubbed their bodies against [them], wore skimpy clothes in front of them, made sexually explicit remarks and touched them provocatively.”<sup>77</sup> Further, a Pentagon investigation has confirmed allegations that female interrogators smeared red dye, which they told detainees was menstrual blood, on the bodies of Muslim detainees. Erik Saar, a former translator at Guantánamo, describes several instances in which female interrogators told detainees that they were menstruating and proceeded to touch them on their hands, face, and body.<sup>78</sup> They then turned off the water in detainees' cells and showers so that they could not wash themselves. This was done, Saar claims, in order to “make the detainee feel that, after talking to [the female interrogator], he was unclean and was unable to go before his God in prayer and gain strength.”<sup>79</sup> For similar reasons, interrogation techniques also explicitly violate taboos against homosexuality. Physicians for Human Rights (PFH) report several incidents in which:

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<sup>77</sup>Carol D. Leonnig and Dana Priest, “Detainees Accuse Female Interrogators.” *Washington Post*, February 10, 2005.

<sup>78</sup> “Ex-G.I. Writes About Use of Sex in Guantánamo Interrogations,” *New York Times*, January 28, 2005, quoting from Saar's classified manuscript.

<sup>79</sup> Ibid.

naked and semi-naked Iraqi detainees [were] forced into sexually humiliating acts including piling into a human pyramid and being forced to masturbate in front of one another. The detainees also were forced into explicit homosexual acts in order to cause further humiliation through the violation of sexual and cultural taboos.<sup>80</sup>

Whether used as an end in themselves or as a prelude to “intelligence gathering,” these techniques have the potential to undermine the basic cultural and personal narratives and commitments thought to organize detainees’ identities. The effect of these deconstituting techniques seems to have been precisely opposite to what Charland called “constitutive rhetoric.” An individual subjected to these procedures would presumably no longer be able to identify himself or herself as part of “a people.”

In sum, the “enhanced interrogation” techniques, used in the Global War on Terrorism, appear to have been designed specifically to undermine detainees’ constitutive narratives. Evoking Badiou’s theory of the subject, I have suggested that those who authorized and implemented these techniques assumed that detainees were not rational agents capable of negotiation and information exchange; instead, they were perceived to be subjects-to-truth whose commitment to violent jihad stood as the organizing truth of their subjectivity. It was assumed, then, that before any information gathering could take place, the interrogator needed to break the detainee’s fidelity to these organizing narratives. To that end, officials authorized an array of techniques designed to violate cultural and religious taboos and induce “psychological regression.” Therefore, it appears that in prosecuting the War on Terrorism, the Bush

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<sup>80</sup> Gretchen Borchelt, *Break Them down: Systematic Use of Psychological Torture by US Forces* (Physicians for Human Rights, 2005).

administration sought to deconstitute detainees not just legally and politically but *existentially* as well, leaving them with no way of reconnecting to the rhetorical resources of self-invention.

## 2.6 CONCLUSION

This chapter has examined official state discourse regarding the legal and political status of suspected terrorists in the Global War on Terrorism. It argued that a set of memoranda, speeches, and legal determinations were used to disrupt existing legal protections and expose individuals to violence that would otherwise be considered unlawful. It coined a term—“deconstitutive rhetoric”—to describe rhetorical action of this kind, which undermines or dismantles the existing legal and/or political status of its addressees. The first section of the chapter identified a neo-Isocratean bias in contemporary rhetorical criticism, arguing that critics have focused on the constructive power of language and comparatively under-acknowledged rhetoric’s destructive potential. The chapter then turned to a close analysis of the use of deconstitutive rhetoric in a series of legal opinions and official statements that shaped the Bush administration’s detention and interrogation policy. Specifically, it focused on the uses of deconstitutive rhetoric in the decision to legally re-define the nation of Afghanistan as a “failed state,” and in the codification of “unlawful enemy combatant status.” Finally, drawing on Badiou’s theory of the subject, the chapter concluded with a discussion of “enhanced” interrogation techniques, which I argue sought to disrupt detainees’ ability to maintain fidelity to perceived truths—resulting in a set of procedures designed to deconstitute the individual not just legally and politically but existentially as well.

This chapter has developed a rhetorical explanation of how the Bush administration's interrogation policy circumvented the Geneva Conventions and other laws of warfare. But there were other legal obstacles to the use of this policy—in particular, the United Nations Convention Against Torture (UNCAT) and 18 U.S.C. § 2340, the U.S. federal law prohibiting torture. However, despite these explicit legal prohibitions, no authorizing officials have been prosecuted for torture. The next chapter argues that the *de facto* impunity enjoyed by those who designed and implemented these harsh interrogation procedures can be explained in part by focusing on definitional rhetoric and, more specifically, on the legal meaning of the word “torture.”

### 3. THE USE OF “TORTURE”: PAIN, PERSONALITY, AND PRECEDENT IN THE U.S. FEDERAL DEFINITION OF TORTURE

The last chapter argued that the detention and interrogation policy adopted by the Bush administration in the Global War on Terrorism should be seen as an outcome of a set of *rhetorical* acts. It showed how the President and his legal team invented a new subject position (the “unlawful enemy combatant”) and new standards of conduct (“enhanced interrogation techniques”), both of which were incompatible with the existing international laws of warfare. The chapter coined a term—“deconstitutive rhetoric”—to describe official discourse that seeks to dismantle the existing legal and political status of its addressees. Through a series of legal memoranda and other official discourse, the Bush administration harnessed the power of rhetoric as a means of force, mobilizing the disruptive power of language and its ability to undermine existing norms and institutions. This use of deconstitutive rhetoric allowed U.S. interrogators to circumvent the Geneva Convention protections for combatant detainees and helped to create a legal sphere in which torture could take place.

The creation of “unlawful enemy combatant” status does not, however, fully explain the *de facto* impunity enjoyed by those who designed and implemented interrogation policies that many agree amount to torture. As a signatory to the United Nations Convention Against Torture (UNCAT), the U.S. is compelled to investigate allegations of torture, and failure to do so is itself a crime.<sup>1</sup> Further, officials must comply with a domestic federal law, 18 U.S.C. § 2340, which

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<sup>1</sup> For this reason, an allegation that uses the term “torture,” especially when uttered by individuals acting in their official capacity as government agents, is not simply a description of an event; it actively

prohibits interrogators from committing acts of torture—defined as acts “specifically intended to cause severe physical or mental pain or suffering” upon another in their custody or control. These laws are applicable regardless of the political status of a detainee. Once an official has been accused of committing or authorizing torture, the sphere of impunity created by the deliberative/deconstitutive tactics examined in the last chapter should collapse and a formal criminal investigation should begin. However, despite numerous formal accusations that torture has taken place, no authorizing official has been prosecuted under 18 U.S.C. § 2340 or the UNCAT.

The current chapter continues the analysis of the detention and interrogation policies developed in the Global War on Terrorism, focusing specifically on the use of a single word: “torture.” The chapter argues that the federal definition of torture, written prior to 9/11, codified a set of strategic ambiguities that have served to protect U.S. interrogators’ preferred methods from legal prosecution. Faced with a crisis of indeterminacy regarding the referent for the term “torture,” caused in part by the development of so-called “no touch” or “psychological” torture techniques, legislators produced a legal articulation of the term that effectively permits rather than prohibits these techniques.<sup>5</sup> This chapter argues that 18 U.S.C. § 2340 offers inadequate legal protection against these “no-touch” techniques, which have become paradigmatic of contemporary torture. It shows how a set of interrogation techniques, first used in 1971 by British interrogators against suspected IRA members, has challenged a number of basic assumptions about the nature of torture and has produced a “definitional rupture” in the legal meaning of the word. The chapter then examines the federal prohibition on torture more closely,

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constitutes grounds for a criminal investigation. Euphemisms for torture used by the Bush administration such as “taking the gloves off” and “going to the Dark Side,” should be understood as attempts to avoid the legal consequences entailed by the public use of the word “torture.”



focusing specifically on the moral and epistemological ambiguities within its legal categories of “pain” and “personality.” The chapter concludes with an alternative view of legal definition that acknowledges the inevitable ambiguity of language and the incomplete and partisan nature of legal terminology.

### 3.1 DEFINITIONAL PRECEDENT AND THE PARAMETERS OF PAIN

The central argument of the chapter contributes to the ongoing reclamation by rhetoricians and communication theorists of “definition” as a site of discursive and political contestation. Definitional arguments shape political reality and constrain rhetorical possibilities therein. As David Zarefsky has shown, “the power to persuade is, in large measure, the power to define.”<sup>2</sup> Stanley Deetz, employing a Habermasian vocabulary, has shown that definitional arguments suppress dissent by “naturalizing” policy choices and systematically distorting the possibility of critiquing implied validity claims.<sup>3</sup> By presenting a situated and contingent position as natural and neutral, definitional arguments can produce a “hegemonic suture” that hides the fundamental indeterminacy underlying any description of experience and protects politically interested choices behind a veil of “common sense.”<sup>4</sup> In Zarefsky’s words, “the key definitional move is simply stipulated, as if it were a natural step along the way of justifying some other claim.”<sup>5</sup>

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<sup>2</sup> David Zarefsky, *President Johnson’s War on Poverty: Rhetoric and History* (University: University of Alabama Press, 1986), 1.

<sup>3</sup> Stanley Deetz, *Democracy in an Age of Corporate Colonization* (Albany: State University of New York Press, 1992).

<sup>4</sup> Ernesto Laclau & Chantal Mouffe, *Hegemony and Socialist Strategy* (London: Verso, 1985).

<sup>5</sup> David Zarefsky, “Definitions,” in *Argument in a Time of Change: Definitions, Frameworks, and Critiques* (Annandale, VA: National Communication Association, 1998), 5.

Edward Schiappa has introduced the term “definitional rupture” to describe the crises of indeterminacy that can arise when the presumed-to-be denotative meaning of a word is suddenly challenged and revealed to be contestable and open to rhetorical refiguration.<sup>6</sup> Schiappa’s “pragmatic” (rather than denotative/essentialist) theory of definition sees definitional ruptures as sites for rhetorical invention and collaborative meaning making.<sup>7</sup> Definition, in this view, appears as part of the artistry of power. A definition, then, is not simply a way of naming an extra-discursive thing-in-itself. Rather, definitions are rhetorical inventions that employ the world-disclosive capacities of language to articulate possibilities of action (and obscure alternatives).

Contemporary debates about whether “no-touch” techniques should legally constitute torture suggest the emergence of a definitional rupture. “Torture” does not maintain a single trans-historical essence, nor do its victims. Rather, both the practice of torture and the legal discourse by which it is understood entail a historically situated and deeply political conception of subjectivity, language, truth, and pain.<sup>8</sup> This chapter argues that the current U.S. legal definition of torture in 18 U.S.C. § 2340 (Appendix B) codifies a kind of “commonsense” understanding of the word torture, which focuses attention on techniques that do grave physical harm to the body rather than on techniques that undermine the individual’s experiential ground without using physical brutality. This is in part because, as this chapter shows, the current law assumes a model of human experience in which symbolic interaction is inessential—under the

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<sup>6</sup> Edward Schiappa, *Defining Reality: Definitions and the Politics of Meaning* (Carbondale: Southern Illinois University, 2003).

<sup>7</sup> For another case study inspired in part by Schiappa’s approach, see Lynn Clarke, “Contesting Definitional Authority in the Collective,” *Quarterly Journal of Speech* 91 (2005): 1-36.

<sup>8</sup> For a consideration of the way torture practices change in accord with transformations in ideas about subjectivity and truth, see Edward Peters *Torture* (Philadelphia: University of Pennsylvania Press, 1986); and Page duBois, *Torture and Truth* (New York: Routledge, 1991).

current law, a human being is assumed to be primarily a “pain feeling body” rather than a “symbol using animal.” U.S. interrogation methods, however, rely on the latter, rhetorical conception of human experience—and use techniques that attack the sense-making and “world-disclosing” capacities of language (instead of physically attacking the body). In the space between the colloquial and legal definitions of torture, two models of human experience (rhetorical and irrhetorical), great violence may take place.

Early signs of the current “rupture” between colloquial and legal definitions of torture could be seen in an important European Court of Human Rights (ECHR) decision, *Ireland v. U.K.* (1978), a case that became a key definitional precedent for 18 U.S.C. § 2340. This case was among the first to bring to light the new “no touch” torture techniques currently used in the U.S. policy of “preventative detention.”<sup>9</sup> In the summer of 1971, as part of a response to increased IRA bombings and other terrorist activities, Belfast police subjected fourteen men to a set of new “depth interrogation” tactics that have come to be known as the “Five Techniques”: sensory deprivation, dietary manipulation, stress and duress postures, sleep deprivation, and white noise.<sup>10</sup> Initial reports characterized the abuse as the work of “bad apple” interrogators. However, historian Alfred McCoy has shown that the Five Techniques were the result of a decades-long CIA and U.S. Department of Defense project that sought to produce a torture program that could be deemed acceptable by a democratic public.<sup>11</sup> Insofar as it worked rapidly to induce a state of “Dependency, Debility, and Dread” without leaving easily verifiable indicators of physical violence, the combined “Five Techniques” offered a powerful weapon for

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<sup>9</sup> For a developed account of these events, along with interviews with the victims, see John Conroy, *Unspeakable Acts, Ordinary People: The Dynamics of Torture* (Berkeley: University of California Press, 2001)

<sup>10</sup> McCoy, *A Question of Torture* (New York: Owl Books, 2006)

<sup>11</sup> McCoy, *A Question of Torture*

liberal counter-terrorism programs.<sup>12</sup> It achieved the destructive effect of traditional, physically brutal torture tactics while falling outside of both the popular-vernacular and legal definitions of the term.

The abuse described in *Ireland v. U.K.* was the result of something akin to a paradigm shift in torture technology. While older torture methods tended to stretch, rend, twist, puncture, burn or otherwise violate the body, the Five Techniques were addressed not to the isolable body itself but to what Calvin Schrag calls the “dynamic field of experience,” which is ontologically prior to such distinctions as subject/object, mind/body, and inside/outside.<sup>13</sup> In effect, the Five Techniques left the body-as-object relatively unmarred by physical stigmata but destroyed the victims’ being-in-the-world. The development of new techniques that did not seem to violate the body and which could not unequivocally be described as physically *painful* at all, revealed a fundamental ambiguity in the very meaning of the word “torture.”

Definitional criteria were used explicitly to warrant the ruling in *Ireland v. U.K.* (1978) that the Five Techniques did not amount to torture:

Although the Five Techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty *implied by the word* as so understood [emphasis added].<sup>14</sup>

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<sup>12</sup> Michel Foucault, *Discipline and Punish* (New York: Pantheon Books, 1973); see also Peters, *Torture*.

<sup>13</sup> Calvin O. Schrag, *Experience and Being* (Evanston: Northwestern University Press, 1969).

<sup>14</sup> *Ireland v. UK*, European Court of Human Rights, 1978.

Here, then, is a clear example of argument by definition in which “to choose a definition is, in effect, to plead a cause.”<sup>15</sup> Faced with a crisis of terminological instability in which the commonplace understanding of the word no longer seemed to match the realities of actual practice, the EHRC seized the power of definition to constrain rhetorical judgment and action. The Court thereby effectively *created* a class of violent acts that could achieve the desired ends of torture, and did so with similar consequences for the victim, but which were not *by definition* torture itself. New techniques had tested the definitional parameters of torture and the result was a victory for state power and a legal understanding of the word that has become increasingly useful to contemporary interrogators.

Further evidence of a definitional rupture in the legal meaning of the word torture can be found in the deliberations about the language adopted in Article 1 of the 1984 United Nations Convention Against Torture (UNCAT) (Appendix C). Controversy surrounding *Ireland v. U.K.* (1978) and evidence that a new “psychological” torture paradigm had emerged led delegates from France and Switzerland to propose what U.N. Special Rapporteur on Torture Manfred Nowak has described as a “horizontal” definition.<sup>16</sup> Specifically, they argued that torture and the lesser offense of Cruel, Inhumane, Degrading Treatment (CIDT) are both extremely aggravated forms of abuse and should be distinguished not by *severity* but by *purpose*. Torture, according to this model, is simply CIDT undertaken by an official with the purposeful intent to produce intelligence or a confession. U.S. and U.K. delegates, by contrast, advocated a “vertical” definition in which torture is distinguished from CIDT by the elevated intensity of pain that it entailed. The term “torture,” in their definition, would be applied only to those acts that caused

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<sup>15</sup> David Zarefsky, “Presidential Rhetoric and the Power of Definition” *Presidential Studies Quarterly* 34 (2004): 607-619.

<sup>16</sup> Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary* (Oxford: Oxford University Press, 2008).

suffering of the very highest severity (and thus “no-touch” tactics like the Five Techniques would likely fall outside of the parameters of torture).<sup>17</sup> Practically, this means that under the horizontal definition, convictions of CIDT in crimes that did not meet the criteria for torture would presumably be rarer and defendants would be burdened to prove that the severe treatment employed was not purposive, as in pure sadism performed without the intent to procure intelligence. Under the vertical distinction, by contrast, convictions of CIDT in crimes that did not meet the criteria for torture would presumably be more common, and here the plaintiff would be burdened to prove that the abuse suffered was so exceedingly severe as to be included among only the very rarest and most egregious offenses.<sup>18</sup>

These definitional disputes were further amplified as drafters debated the inclusion and meaning of the term “severe” in Article 1 of the UNCAT. Because the United States was of the opinion that torture constituted an act of CIDT of the highest intensity, they argued that the severity of the pain must be an essential element of the definition of torture.<sup>19</sup> They proposed that the definition of torture be revised to include only acts warranting the description “extremely severe,” and thereby (with the support of the United Kingdom) sought to codify the favorable “progressive severity” interpretation from *Ireland v. U.K.* as binding international law. The U.S. delegate sought to narrow the scope of the definition even further by adding an intensifying

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<sup>17</sup> The argument for a “vertical” distinction was pushed to its logical extreme in the now infamous “Bybee Memo,” (which limited the appellation of torture to only those acts whose severity “must rise to the level of death, organ failure, or the permanent impairment of a significant body function.” See Jay Bybee, “Memorandum for Alberto R. Gonzales Counsel to the President, August 1, 2002,” in *The Torture Papers: The Road to Abu Ghraib*, Karen J. Greenberg and Joshua L. Dratel, eds. (New York: Cambridge University Press, 2005), 213-214.

<sup>18</sup> The argument for a “vertical” distinction was pushed to its logical extreme in the now infamous “Bybee Memo,” (which limited the appellation of torture to only those acts whose severity “must rise to the level of death, organ failure, or the permanent impairment of a significant body function.” See Jay Bybee, “Memorandum for Alberto R. Gonzales Counsel to the President, August 1, 2002,” in *The Torture Papers: The Road to Abu Ghraib*, Karen J. Greenberg and Joshua L. Dratel, eds. (New York: Cambridge University Press, 2005), 213-214.

<sup>19</sup> Nowak & McArthur, *The United Nations Convention Against Torture: A Commentary*, 37.

modifier not just to the term indicating the kind of suffering entailed (i.e., extremely severe) but also to the motive. In sum, the United States advocated the following definition: “the offence of torture includes any act by which *extremely* severe pain or suffering, whether physical or mental, is *deliberately* and *maliciously* inflicted on a person by or with the consent or acquiescence of a public official.”<sup>20</sup>

Significantly, the U.S. proposed definition was defeated, its preferred modifiers were rejected, and the official text of Article 1 has since been interpreted as stating that the *purpose* of abuse rather than its severity alone distinguishes torture from CIDT. However, the atypical U.S. definition ultimately won adherence domestically, and representatives of the United States agreed in 1994 to ratify the UNCAT only subject to a series of “understandings,” among which was stipulation the newly written federal law, 18 U.S.C. § 2340, would legally supersede the more inclusive UNCAT definition. It is to the U.S. federal definition, its assumptions, and their consequences that this chapter now turns.

### 3.2 THE PROBLEM OF PAIN IN 18 U.S.C. § 2340

The goal of this section is to show how the U.S. federal definition of torture in 18 U.S.C. § 2340 codified as law a specific model of subjectivity—ontologically and epistemologically isolated private individualism—and torture—intense physical pain purposefully administered with affective cruelty. That is, the U.S. definition explicitly prohibits actions that correspond with a commonplace image of torture, but remains implicitly (and perhaps *strategically*) ambivalent

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<sup>20</sup> As quoted in Nowak & McArthur, *The United Nations Convention Against Torture: A Commentary*, 39.

about the less overtly physically intrusive techniques most likely to be used by U.S. military interrogators.

In 18 U.S.C. 2340, torture is defined as the intentional infliction of pain: “‘Torture’ means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering.” While most legal and popular understandings of the term include “pain” as an essential component, philosophers have long considered pain to be a uniquely obscure concept plagued by ambiguities that make it difficult to verify and quantify. Elaine Scarry states the problem eloquently:

[F]or the person in pain, so incontestably and unnegotiably present is it that “having pain” may come to be thought of as the most vibrant example of what it is to “have certainty,” while for the [witness] it is so elusive that “hearing about pain” may exist as the primary model of what it is “to have doubt.” Thus pain comes unsharably into our midst as at once that which cannot be denied and that which cannot be confirmed.<sup>21</sup>

However, as Schrag has persuasively argued, what Scarry theorizes as essential to *the* nature of pain itself would be better understood as evidence of a “crisis of the vocabulary of pain,” which “seems to be suspended somewhere between the subjective and objective sides of the phenomenon in such a manner that the language concerning pain displays an intrinsic ambiguity.”<sup>22</sup> In this commonplace understanding, pain, along with all other sensations and experiences, is assumed to be the personal property of an individual separated from others by an

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<sup>21</sup> Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 4.

<sup>22</sup> Calvin Schrag, “Being in Pain,” in *The Humanity of the Ill: Phenomenological Perspective*, Victor Kestenbaum, ed. (Knoxville, TN: University of Tennessee Press, 1982), 103.



unbridgeable gap. The problem, as Rorty suggests, is that “we insist on thinking of having a pain in ocular metaphors—as having a funny sort of particular before the eye of the mind.”<sup>23</sup>

Schrag and Rorty thus identify a fundamental problem with the very idea of a distinct and quantifiable entity called “pain,” a specific magnitude of which might count as torture. They argue for a refigured understanding of pain not as something one “has” (a property metaphor) but as something one “is” or “has become” (an existential metaphor). This refiguring better comports with the practice of contemporary torture. Indeed, the importance of pain in torture is due not to its quantifiable magnitude, but to the way it intrudes upon and constrains one’s life projects, refigures identity, demands acknowledgment and accommodation, and, given sufficient severity and duration, evacuates one’s world. That is, pain is not some measurable “thing” but part of the field of its victim’s very being. Modern-individualist theories of subjectivity however, insofar as they imagine a pure, isolated subject abstracted from culture and language, produce a correspondingly abstract “pure pain.” It is this abstract entity, “pain,” that must be conjured in legal judgments about whose world-annihilating suffering should be considered torturous.

The problem with pain in 18 U.S.C § 2340 goes deeper still, insofar as it adds the modifier “severe” to the criterion of pain. As suggested above, the addition of such a modifier inclines jurists toward a “vertical” rather than “horizontal” interpretation of torture.<sup>24</sup> As such it requires that torture be distinguished from lesser offenses according to the intensity of the pain experienced, rather than by its intended purpose of intelligence gathering, coercion, or punishment. That is, it can be used to justify a ruling akin to that issued in *Ireland v. U.K.*

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<sup>23</sup> Again, see Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary*.

<sup>24</sup> Again, see Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary*.

(1978) which, again, found that “no-touch” torture, though Cruel, Inhumane, and Degrading Treatment (CIDT), did not by virtue of its severity warrant the special stigma associated with the word “torture.” Such a vertical interpretation is, however, even more problematic in the context of American criminal law insofar as there is no U.S. definition of CIDT. So, a set of techniques deemed not to amount to torture by virtue of a perceived lack of severity could only be interpreted as “aggravated assault,” a crime for which it is difficult to prosecute physically remote authorizing officials.

The focus on the severity of pain, when coupled with the “specific intent” clause, makes affective cruelty an essential dimension of torture. This is to the benefit of those who argue that torture may be justified as a means of intelligence gathering, a common trope among torture advocates in contemporary democracies.<sup>25</sup> Since to be found guilty of torture, one must have *specifically intended* to cause pain, an interrogator could be found exculpable for causing pain presumed to be incidental to the task of information gathering. Thus, the determination that torture has occurred rests on immaterial *intention* rather than material *practice*; acts of torture are legally permissible provided they are not motivated by an emotional state of cruelty.

Lastly, the affective dimension of the “specific intent” clause implicitly defines torture as an interpersonal event—a violent interaction between a single, sadistic torturer and a single victim. However, contemporary torture techniques often defy this interpersonal model. Consider the testimony of Sergeant “Jeff Perry,” a U.S. interrogator who worked at a “black site” interrogation facility within Baghdad International Airport:

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<sup>25</sup> See, for example, Alan Dershowitz’s argument in *Why Terrorism Works* (New Haven: Yale University Press, 2002).

There was an authorization template on a computer, a sheet that you would print out, or actually just type it in. And it was a checklist. And it was all already typed out for you, environmental controls, hot and cold, you know, strobe lights, music, so forth. Working dogs, which when I was there, wasn't being used. But you would just check what you want to use off, and if you planned on using a harsh interrogation you'd just get it signed off.<sup>26</sup>

This policy of automatically authorizing interrogation techniques makes the locus of responsibility for abuse ambiguous; and it ensures that authorizing officials can avoid physical and emotional contact with detainees.<sup>27</sup> Culpability for torture, therefore, cannot easily travel up the chain of command. Premised on a model of torture as aberrant interpersonal cruelty, 18 U.S.C. § 2340 remains unable to adequately address the dissemination of remotely authorized, “business-as-usual” abuse.

Though physical pain is notoriously difficult to define, describe and verify, the idea of specifically “mental pain” identified in 18 U.S.C. § 2340 redoubles these complexities. Contemporary scholars of rhetoric and communication theory have argued that “mental interiority” is largely an invention of modern disciplinary practices and that the idea of “mind” as an isolated and extra-discursive entity is a fiction that has largely outlived its usefulness.<sup>28</sup> Schrag offers a clear and artful formulation of the issue:

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<sup>26</sup> As quoted in, Human Rights Watch, *No Blood, No Foul: Soliders' Accounts of Detainee Abuse in Iraq*, <http://www.hrw.org/en/reports/2006/07/22/no-blood-no-foul>, 12. According to Human Rights Watch, the soldier described as “Jeff Perry” requested that the interviewer not use his real name.

<sup>27</sup> On the impersonality of the bureaucratic style, see Robert Hariman, *Political Style: The Artistry of Power* (Chicago: University of Chicago Press, 1995), 141-176.

<sup>28</sup> The literature on this subject is vast. Among the best resources are Rorty, *Philosophy and the Mirror of Nature*; Peters, *Speaking into the Air*; Richard Sennett *The Fall of Public Man* (New York: W.W. Norton, 1974); Nickolas Rose, *Governing the Soul: The Shaping of the Private Self* (New York: Routledge, 1990);

[M]odernity's invention of mind as a transparent mental mirror, and the accompanying invention of a theoretico-epistemological paradigm that legislates criteria in advance, contributed little to an understanding of the human self in its manifold concretion as speaking and narrating subject. The modern concepts of mind and knowledge conspired in the constructions of an abstracted, insular knowing subject, severed from the context and contingencies out of which knowledge of self and knowledge of the world arise.<sup>29</sup>

That is, the idea of “mind” itself is as abstract and decontextualized as the idea of “pain”—both bear witness to a crisis in the modernist vocabulary of experience and the two together provide inadequate legal protection against “post-modern” torture techniques that have been specifically designed to circumvent these definitional criteria. For example, the idea of abstract interiority, in which language, culture, and religion are secondary and inessential, makes culturally specific forms of pain such as those used by U.S. interrogators to violate religious Muslim detainees difficult to classify as torture.

If physical pain, as Scarry suggests, resists clear linguistic representation, mental pain seems to be characterized by a corresponding over-abundance of synonymous descriptive terms. It is not clear, for instance, how “mental pain” could be distinguished from related phenomena like despair, shame, traumatic stress, identity disorder, defilement, alienation, humiliation, psychosis, spiritual crisis, ontological insecurity, *Angst*, anomie, and the like. Scarry's analysis implies a moral hierarchy that makes protection against physical pain a priority and implicitly suggests that an individual's “mental” state is his or her own private responsibility. This

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and Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Harvard University Press, 1989).

<sup>29</sup> Schrag, *The Self after Postmodernity* (New Haven: Yale University Press, 1999), 25.

hierarchized distinction ignores the fact that physical pain can in some cases *strengthen* a torture victim's sense of self and purpose. Further, it provides moral and epistemological justification for "no-touch" techniques that cannot be described as unequivocally "painful" at all.

The above section has attempted to show that the U.S. definition of torture is overly focused on the body-in-pain abstracted from the lived cultural and personal/phenomenological conditions of experience. The result is a definition obscured by dualistic distinctions such as mind/body, essence/existence, language/sensation, and public/private. For these reasons, the criterion of "pain" in 18 U.S.C 2340 provides an inadequate defense against the kinds of torture techniques preferred by U.S. interrogators and obscures legal culpability behind the veil of deep ontological and epistemological complexities. The striking fact about "no-touch" torture is that its techniques are not self-evidently "painful" and that the primary target of attack is neither the mind nor the body but one's very self—one's way of being in the world. The consequence is a legal definition that may protect against physical brutalization but leaves individuals vulnerable to attacks on the life-world practices that form one's personhood. It is to this complex dimension of contemporary torture that the next section turns.

### 3.3 THE PROBLEM OF PERSONALITY IN 18 U.S.C. § 2340

Having examined a set of complexities entailed by the term "pain" in the U.S. federal definition of torture, I turn next to a second problematic term, "personality." Among the acts that can meet the definition of mental harm in US 2340, one finds the following: "the administration or application ... of mind-altering substances or other procedures calculated to disrupt profoundly

the senses or the personality.”<sup>30</sup> This clause warrants close scrutiny, as it is the only element of the current definition that seems to address the kind of “no touch” torture used in the IRA case and in the current “harsh interrogation” program in the Global War on Terrorism. However, as with pain, ambiguities regarding personality limit the usefulness of the definition as a protection against these methods. In order to understand the significance of the “personality” clause in this text, it is important to note how “personality” has emerged as both a weapon and a target in the current war.

Tony Lagouranis, a former U.S. Army interrogator working at Abu Ghraib in 2004, described the mismatch between older modernist theories about identity and interrogation and the realities of policy choices in the current war: “Our training was designed for war with the Soviet Union, all based on the idea that we would be questioning uniformed POWs—maybe Russians or East Germans—who would break quickly and gladly provide information on order of battle, tank formations, or plans of attack.”<sup>31</sup> That is, interrogation was seen as an art of information gathering from individuals whose identification with a nation was presumed to be a rational and therefore negotiable symbolic act. However, contemporary counterinsurgency or “Complex Irregular Warfare” like the Global War on Terrorism theorizes subjectivity in quite a different way. Rather than presuming that individual combatants are aggressive only by virtue of their public role as soldiers for an enemy state, U.S. officials tend to characterize combatants as individuals whose enmity is a part of their essential self and an outcome of a subjective transformation associated with their innermost religious identity. That is, an individual is an enemy not just in his public role, but in his very personhood. As Paul Gilbert explains:

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<sup>30</sup> 18 U.S.C § 2340

<sup>31</sup> Tony Lagouranis, *Fear Up Harsh: An Army Interrogator's Dark Journey Through Iraq* (New York: NAL Caliber, 2007), 35.

The kind of group identification that makes new wars possible is sometimes described as a ‘resurrection of tribalism’ in which supposedly primitive and irrational instincts engendering intergroup hatred and violence displace the modern, rational dispositions towards social co-operation and harmony which are fostered by most contemporary states.<sup>32</sup>

Rather than individuals rationally consenting to symbolic identity-positions as soldiers of a nation-state, the enemy is presumed to be *fundamentally* violent at the level of his or her pre-rational and extra-discursive nature. Given such assumptions about subjectivity and identity, interrogation tactics that rely on “procedures calculated to disrupt profoundly the senses or the personality” have become a primary weapon of counterinsurgency warfare.

Unlike modernist “Great State” war, victory in post-modern counterinsurgency warfare often amounts to little more than the monopolization of violence achieved by breaking potential militants’ identificatory bonds with local charismatic leaders. The Global War on Terror is thus being fought not against nations, but against specific individuals and the personal relationships that sustain solidarity among loyalty communities.<sup>33</sup> As Chris Demchak notes, “This ‘repersonalization’ of war,” represents a break with the modernist paradigm and “harkens back to military conflicts of several centuries ago when the battle goal was to kill the king or the general ... the battle ended as soon as someone made it up there [on the mountain] to kill the major lord.”<sup>34</sup> Indeed, the targeting of specific individuals has been an explicit focus of the Global War

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<sup>32</sup> Paul Gilbert, *New Terror, New Wars* (Washington, D.C.: Georgetown University Press, 2003), 47.

<sup>33</sup> On loyalty communities as a target of warfare, see John Robb, *Brave New War: The Next Stage of Terrorism and the End of Globalization* (Hoboken, N.J.: John Wiley and Sons, 2007).

<sup>34</sup> Chris Demchak, “Watersheds in Perception and Knowledge,” in *Critical Reflections on Security and Change*, Stuart Croft and Terry Terriff, eds. (London: Frank Cass Publishers, 2000), 188. Thanks to Gordon Mitchell for bringing this and his article “Public Argument- Driven Security Studies,” *Argumentation and Advocacy*, 39 (2002): 57-71 to my attention.

on Terrorism from its initial conception. The September 18, 2001 Congressional “Authorization for the Use of Military Force,” authorized the president to “use all necessary and appropriate force against those nations, organizations, or *persons* he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001...” [emphasis added]. This official declaration of the *person* as a target of military power signals the emergence of a new paradigm within which older models of citizenly subjectivity are revealing their inadequacy.<sup>35</sup>

Preventative detention and “no-touch” torture have thus emerged as tactical responses to the demands of prosecuting war against *individuals* in this uniquely personal conflict. Torture here achieves three politically and militarily significant ends: first, it produces through coercion the betrayal of family, comrades, and other loyalty groups; second, it terrorizes victims and outside witnesses;<sup>36</sup> third, it can induce a more radical state of “subjective destitution” after which one is unable to return to one’s former life (or, in more extreme cases, unable to maintain intersubjective relationships at all). In this sense, “post-modern” torture differs significantly from “information gathering” or condoned cruelty toward enemy POWs and instead more closely resembles the disciplinary and confessional rituals of pre-modern religious conversion.<sup>37</sup>

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<sup>35</sup> The so-called “lessons learned” by the initial failure of the US counterinsurgency operation in Iraq are, likewise, revelatory of this new paradigm. The inadequacy of nationalism as a coherent subject-position; the strength of primary loyal communities; the importance of “hold” strategies to maintain security after an initial “clear” using semi-traditional heavy and small arms; the failure of representational democracy as a goal or tool especially against a militant minority who would politically benefit more from continued fighting than from elections— all demonstrate the failure of liberal-individualist theories of identity and state-centered modernist theories of warfare. On this point, see Carter Malkasian, “Counterinsurgency in Iraq,” in *Counterinsurgency in Modern Warfare*, Daniel Marston and Carter Malkasian, eds. (New York: Osprey Publishing, 2008).

<sup>36</sup> This is especially true for the culturally specific techniques designed to be publically humiliating. See Stephen F. Eisenman, *The Abu Ghraib Effect* (London: Reaktion Books, 2007) on this point.

<sup>37</sup> Here Foucault’s late work on the “Hermeneutics of the Subject” might be productively synthesized with his earlier work on torture in light of these new techniques that had not fully emerged in his lifetime.



For these reasons, the “personality” clause in 18 U.S.C § 2340 is most significant and most in need of critique and revision. “Disruption of personality” is and likely will remain a preferred tool for executors of counterinsurgency warfare. In the now infamous KUBARK interrogation manual (1963), the goal was explicit:

there is an interval—which may be extremely brief—of suspended animation, or psychological shock or paralysis. It is caused by a traumatic or subtraumatic experience which explodes, as it were, the world that is familiar to the subject as well as his image of himself within that world. [T]he more well-adjusted...the subject is, the more he is affected.<sup>38</sup>

As McCoy has shown, there is an unbroken chain connecting this Cold War-era document, through the techniques described in *Ireland v. U.K.*, to the “enhanced interrogation techniques” used in the current conflict. That these techniques do not conclusively meet the legal definition of torture indicates deep problems with the implied conception of “personality” therein.

The addition of culturally specific torture, such as those techniques examined in the previous chapter, is the primary innovation developed by GWOT interrogators. This new approach explicitly makes personality both a weapon and target. The so-called “Bad Muslim” approach employs techniques designed to compromise a detainee’s ability to maintain his or her religious practice—including requiring detainees to recite anti-Muslim propaganda, forcibly shaving men’s beards, violating of taboos regarding sexuality and nudity, and other techniques designed to exploit what interrogators take to be unique features of Muslim identity.<sup>39</sup> Despite suffering physical violence and other abuses, detainees have reported that these “Bad Muslim”

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<sup>38</sup> KUBARK Counter-intelligence Interrogation Manual, 1963, 65-66.

<sup>39</sup> For documentation of these techniques, see Mark Danner, *Torture and Truth: America, Abu Ghraib and the War on Terror* (New York: The New York Review of Books, 2004).

techniques are the most damaging. Suzanne Cusick describes the unique form of violence of these techniques in religious/existential terms. “Deriving directly from who they are or have chosen to be as enculturated human beings—that is, as persons, not only as sensate biological organisms—this psychic pain attacks its target and causes self-betrayal in the intrasubjective space that many religious traditions call the soul.”<sup>40</sup>

However, while such techniques are clearly “degrading” and “inhumane,” it is unclear whether they could be found to constitute a “disruption of the senses or personality.”<sup>41</sup> While one might be personally humiliated by being forcibly shaved or dressed in revealing clothing, the coherence of an individual’s identity is often assumed to depend upon his or her ability to rise above the sense of shame and defilement. That is, “humiliation” might be seen as personal weakness (of both the victim and the perpetrator), rather than evidence of systematic torture. The dualistic elements of modern individualist theories of the self make isolation and silent alienation amidst a hostile world of noise appear as unfortunate but ever present threats common to the human being as such. The material production of these conditions—through sensory and communicative deprivation, religious defilement, white noise, and the like—seems, in this view, to be a way of frightening a detainee and making him or her personally uncomfortable, rather than an attack on the very foundation of one’s personhood.<sup>42</sup> As with pain, the language of “personality” is thus poorly suited to address and effectively prohibit contemporary torture

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<sup>40</sup> Suzanne G. Cusick, “‘You are in a place that is out of the world’: Music in the detention camps of the Global War on Terror,” *Journal of the Society of American Music* 2 (2008): 17.

<sup>41</sup> As Peters has shown, liberalism has long celebrated acts of “courting the abyss,” championing as strength of self one’s capacity to endure the otherwise morally intolerable and to transcend private outrage by taking on the position of a public impartial spectator.

<sup>42</sup> For example, Warrant Officer (and former SERE instructor) Lewis Welshofer described a denying his prisoner the right to pray in this way: “I took away one of his comfort items.” Quoted in Michael Otterman, *American Torture from the Cold War to Abu Ghraib and Beyond* (Melbourne: Melbourne University Press, 2007), 177-180.

techniques. To the extent that legal discourse is relied upon to provide meaningful protections against state violence, a more robust vocabulary of experience is urgently needed.

### 3.4 PARTIAL LANGUAGE

This section has argued that the U.S. federal definition of torture has codified a set of strategic ambiguities that effectively permit the preferred techniques of U.S. interrogators. This, however, raises the question—can a definition be unambiguous? To be clear, I am not advocating for a definition of torture that perfectly grasps its essence. To do so would require accepting a view of language that is, by many accounts, untenable. As Brockelman notes, “Meaning does not exist in an ideal realm of perfect clarity and distinctness, apart from and antedating the ambiguous domain of ordinary usage.”<sup>43</sup> Ambiguity, it seems, is a basic feature of language as such. Moreover, I contend that the use of the federal definition of torture as an instrument of state power is made possible in part because of the commonplace assumption that the law is complete and unambiguous. Thus it is not ambiguity *per se* that makes the legal understanding of “torture” inadequate to the task of prohibiting harsh interrogation. The challenge faced by the critic is to find ground for critique of the current definition of torture, without recourse to a mythic “objective” or “unambiguous” definitional language. Georges Gusdorf, in his *Speaking*, opens a pathway for such a critique.

The word owes its efficacy to the fact that it is not an objective notation, but an *index of value*. The most common name does not limit its activity to the object it

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<sup>43</sup> Paul T. Brockelman, “Translator’s Introduction” in Georges Gusdorf, *Speaking* (Evanston: Northwestern University Press, 1965), xiii.

denotes by appearing to isolate it from its context; it determines the object as a function of its environment....In other words, each word is a *situation-word*, the word which sums up the state of the world as a function of my decision.”<sup>44</sup>

Following Gusdorf, we may say that a definition should be judged not according to its alleged denotative accuracy; rather it should be evaluated in terms of the values it indexes, the situations it encompasses, and the practical action it makes possible. Thus, in the case at hand, one may say that the definition of torture in the U.S. federal law does not name an isolated phenomenon and objectively grasp its essence. Instead, it “sums up a state of the world” and indexes a set of values. That is, the federal definition of torture, like all definitions, is *partial*—meaning it is both incomplete and partisan.

Based on my analysis of the law above, I contend that this partial definition achieves three main goals, each of which serves to maximize state power and minimize legal culpability. First, the U.S. federal definition of torture achieves the goal of publically appearing to constrain state violence while implicitly permitting the techniques used in actual practice. This is important because as a signatory to the UNCAT, the U.S. is obligated to investigate allegations of torture; failure to do so amounts to obstruction of justice. There are ideological reasons for prohibiting torture, as well. For many legal theorists, the prohibition on coercive interrogation is not just one law among many, but stands as an archetypal norm of modern jurisprudence.<sup>45</sup> And, David Luban notes that for modern democratic states, torture is uniquely abhorrent because it stands for many as an emblem of tyrannical sovereign power—irrational, cruel, and in violation of life,

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<sup>44</sup> Georges Gusdorf, *Speaking*, (Evanston: Northwestern University Press, 1965), 9-10.

<sup>45</sup> Jeremy Waldron, “Torture and Positive Law: Jurisprudence for the White House,” *Columbia Law Review* 105(2005): 1681-1750

liberty, and property. “Torture is tyranny in microcosm, at its highest level of intensity.”<sup>46</sup> Facing legal and ideological pressure to prohibit torture, but wishing nonetheless to maximize state power, legislators have produced a legal definition that ensures that the preferred techniques used by American interrogators would fall outside of the scope of that legal term.

Second, the U.S. federal definition of torture prohibits interrogation techniques that are likely to trigger the public’s abhorrence of cruelty, brutality, and overt sadism, but permits techniques that could be administered with clinical or bureaucratic proceduralism and that could be justified as “information gathering.” If definitions can be said to be limited by the “situations” they summarize, the current federal definition of torture seems (perhaps strategically) unable to summon a situation such as this: an individual is subjected to sleep and sensory deprivation or some other “clean” techniques, under some legal authorization, with direct oversight by medical professionals, in a dispassionate manner, to extract some crucial information (think “ticking time bomb”) rather than for punishment or to produce a confession.<sup>36</sup> The avoidance of physical brutality, the absence of overt sadistic pleasure for the torturer, the legal and medical scrutiny, and the pragmatic “information gathering” motive all make this a kind of “perfect storm” situation to justify harsh interrogation under the current law. “Intelligence gathering” torture can thereby satisfy a democratic public’s desire for the free and unregulated public transmission of information; while sadistic torture remains a technique of tyranny, “no touch” torture can seemingly be justified as a tool *against* tyranny toward the presumably free circulation of undistorted information.<sup>47</sup>

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<sup>46</sup> David Luban, “Liberalism, Torture, and the Ticking Bomb,” in *The Torture Debate in America*, Karen Greenburg, ed. (Cambridge: Cambridge University Press, 2006), 43.

<sup>47</sup> Consequentialist moral arguments for the potential justification of torture in states of emergency often rely on hypothetical cases that resemble this ideal type. Some, such as Keith Pavlischek, include an

Third, the U.S. federal definition of torture prohibits interrogation techniques that do overt violence to the body but permits those techniques that dismantle an individual's sense- and meaning-making capacities without seeming to violate the body. That is, the current prohibition on torture assumes that the individual is primarily a "pain-feeling body" and comparatively ignores the sense in which an individual is primarily a "symbol-using animal."<sup>48</sup> Therefore, it does not protect detainees from those techniques that attack the world disclosive capacities of language-use.

### 3.5 CONCLUSION

This chapter has examined the federal definition of torture, arguing that the authors of 18 U.S.C. § 2340 have codified a set of strategic ambiguities that have served to protect U.S. interrogators' preferred methods from legal prosecution. Faced with a crisis of indeterminacy regarding the referent for the term "torture," caused in part by the development of so-called "no touch" or "psychological" torture techniques, legislators have produced a legal articulation of a term that effectively permits rather than prohibits these techniques. The chapter has argued that the law has produced a state of *de facto* impunity for "enhanced interrogation" techniques that exploit moral and epistemological ambiguities regarding the nature of "pain" and "personality." The

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argument by degree, claiming that if the greater violation of killing is sometimes justified (e.g. shooting a hostage taker to save a victim), then the lesser violation of torture is sometimes justified. See Keith Pavlischek, "Human Rights in an Age of Terror," *Faith and Freedom* 26 (2007): 10-13. My response is two-fold: First, the general prohibition on torture should not be formulated with a rare case like the "ticking time bomb" scenario as its paradigm. Second, contemporary U.S. torture practices which often take place in long-term solitary confinement cells that are physically and temporally removed from scenes of battle, are best described as different in *kind* from both emergency information gathering interrogation and from swift targeted killings.

<sup>48</sup> See Kenneth Burke, *Language as Symbolic Action: Essays in Life, Literature, and Method*, (Berkeley: University of California Press, 1966).

chapter then calls for alternative criteria for evaluating legal definitions, acknowledging the inevitable ambiguous and partiality of legal language.

This chapter, along with the previous one, has advanced a unique conception of the *rhetoric* of contemporary war. Rather than focusing on rhetoric as the art of persuasive speaking, I have sought to develop a model of rhetoric, and war rhetoric more specifically, as a *force* capable of materially transforming its addressees. War rhetoric, in this sense, is not limited to speeches that glorify the cause and demonize the enemy. Rhetoric is not just a prelude to violence. In the cases examined in these first two chapters, rhetoric stands as an instrument of violence—a weapon capable of undermining legal protections and unraveling detainees’ basic existential narratives. At the same time, these two chapters have shown how recognition of this violence has been obscured by explanatory vocabularies that underemphasize the centrality of language to human experience. To many, “no-touch” torture techniques thus seem somewhat less violent than explicitly painful interrogation procedures. That is, if the Global War on Terrorism has in some sense *weaponized* rhetoric, it remains, nonetheless, a *concealed* weapon.

The next chapter extends each of these lines of argument by focusing on the material, architectural component of the U.S. interrogation program—the supermax detention cell. These cells allow interrogators to subject detainees to long-term solitary confinement and near-complete communicative deprivation, thereby producing effects tantamount to torture without requiring physical contact with detainees. The chapter argues that the supermax cell should be understood as a radical architectural form—not a “place” where torture may take place, but as a weapon.

#### 4. BEING DETAINED: TIME, SPACE, AND INTERSUBJECTIVITY IN MILITARY DETENTION

This chapter examines the material, architectural component of the contemporary “no-touch” torture paradigm—the supermax detention cell.<sup>1</sup> Legal and vernacular definitions of torture assume that the practice necessarily entails an interpersonal relationship between interrogators and detainees. As Chapter three has shown, the U.S. federal definition of torture only prohibits acts of violence committed by individual agents who specifically intend to do harm. However, this chapter argues that new high-tech prison cells used in the Global War on Terrorism are able to produce conditions tantamount to torture without requiring overtly violent physical contact with detainees. It develops a critique of the policy of indefinite detention informed by the view that human beings are “altercentric”—meaning that interpersonal interaction is foundational to one’s humanity. Under certain conditions, simply depriving a person of meaningful human contact may compromise that person’s sanity. The chapter argues that supermax cells give interrogators unprecedented control over basic components of human experience—the meaningful, lived engagement with time, space/place, and other people. It argues that these detention cells can produce a world that is *atopic* (without place), *akairotic* (without the time of

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<sup>1</sup> For a good introduction to the literature on supermax prisons, see the following: Human Rights Watch, *Cold storage: super-maximum security confinement in Indiana*. (New York: Human Rights Watch, 1997); Roy King “The Rise and Rise of Supermax: An American Solution in Search of a Problem? *Punishment and Society*, (1999): 163-86; Donice Neal, ed., *Supermax Prisons: Beyond the Rock*. (Lanham, Md.: American Correctional Association, 2003); Lorna Rhodes, *Total Confinement: Madness and Reason in the Maximum-Security Prison* (Berkeley: University of California Press, 2004); Stephen John Hartnett, *Incarceration Nation: Investigative Prison Poems of Hope and Terror* (Walnut Creek, CA: AltaMira/Rowman & Littlefield, 2003); and Kate King, ed., *The Prison Journal* 88 (2008), a special issue on supermax incarceration.



opportunity and action) and *apolitical* (without meaningful interpersonal interaction). The supermax cell, therefore, stands as a fundamental transformation of the ends and nature of architecture.<sup>2</sup> It is not a “place” where torture may take place, but a weapon—allowing military interrogators to effectively torture without a torturer.

#### 4.1 THE DETENTION CELL IN THE GLOBAL WAR ON TERRORISM

In order to understand the continued importance of supermax detention in the Global War on Terrorism, one must first understand some of the unique challenges of contemporary “asymmetrical” military conflicts.<sup>3</sup> When President Bush declared on May 2, 2003 that, “major combat operations in Iraq have ended,” he showed evidence of a fundamental misconception about the nature of the enemy and the “end of war” in so-called Complex Irregular Warfare (CIW). Modernist war theory presumes that war takes place between legally recognized sovereign nation-states and ends when the parties agree to the terms of a formal surrender. In this

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<sup>2</sup> On architecture as a weapon, see Eyal Weizman, “The Politics of Verticality: The West Bank as an Architectural Construction,” In *Territories: Islands, Camps, and Other States of Utopia*, A. Frank, ed., (Berlin: Walther Konig, 2003).

<sup>3</sup> The high-tech detention cells currently used by the U.S. military in Guantanamo Bay, Parwan Prison (near Bagram Airbase, Afghanistan), and other detention facilities were originally designed for use in domestic penitentiaries. The supermax cell emerged in U.S. domestic prisons in the 1980s as a technological innovation in the domestic struggle for a state monopolization on violence amidst the War on Drugs and related public policy changes. Overcrowding, inmate organization (“gangs”), riots, escapes, and other acts of intra-penitentiary violence led to the development of a new architecture of confinement and control. Spencer Harrington has argued that the “modern history” of extreme isolation cells “began on Saturday, October 22, 1983, when Thomas Silverstein, an inmate at the federal maximum-security penitentiary in Marion, Illinois, stabbed a correctional officer forty times, precipitating a total lockdown of the prison.” What happened at Marion was, at the time, a radical transformation in detention policy. While most US maximum-security facilities had segregation cells for holding “exceptional” disciplinary violators (often referred to as “the hole”), the lockdown at Marion penitentiary was unique in that *all* the cells were turned into solitary segregation cells. The “total lockdown” model quickly spread and architects began experimenting with new forms specifically designed for long-term solitary confinement, automation, and minute environmental control.

model, an army is assumed to be a legally constituted entity, hierarchically organized and beholden to a centralized command structure. When the commander-in-chief issues a declaration of surrender, each citizen-soldier, as a representative of the state, must find himself or herself addressed by this declaration and thus dutifully lay down arms. This modernist paradigm, which “sees warfare as essentially a contest between the armed forces of nation states” with “unity of command”<sup>4</sup> has failed in the face of contemporary CIW conflicts involving enemies who are “transnational in scope, nonhierarchical in structure, clandestine in approach and, and who operate outside the context of nation-states.”<sup>5</sup>

Recognizing the inadequacy of this nationalist/modernist model, the Department of Defense has initiated a “reorientation toward counterinsurgency and stability operations.”<sup>6</sup> In counterinsurgency operations (COIN), the “Clausewitzian objective of *defeating the enemy*, has to be replaced by a focus on people, i.e., *separating the population base from the insurgents worldwide*.”<sup>7</sup> As then-Secretary of State Condoleezza Rice explains, “our political-military strategy has to be to clear, hold, and build: to clear areas from insurgent control, to hold them securely, and to build durable, national...institutions.”<sup>8</sup> Rice’s comments suggest that in the COIN/CIW paradigm, the traditional military goal—compelling the enemy to formally surrender—is replaced by a “managed” approach to the long-term control of populations.

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<sup>4</sup> Thomas X. Hammes, “Information operations in 4GW,” in Terriff, Karp, and Karp (eds.), *Global Insurgency and the Future of Armed Conflict*, 201.

<sup>5</sup> Montgomery McFate, “The Military Utility of Understanding Adversary Culture,” *Joint Force Quarterly* 38 (2005): 48.

<sup>6</sup> David H. Ucko, *The New Counterinsurgency Era: Transforming the U.S. Military for Modern Wars* (Washington, D.C.: Georgetown University Press, 2009), 5.

<sup>7</sup> Colonel Richards (USAF, Retired), Lieutenant-Colonel Wilcox (USA, Retired), and Colonel Wilson (USMC, Retired), “America in Peril: Fourth generation warfare in the twenty-first century,” in *Global Insurgency*, 128; see also Department of the Army, FMI 3-07-22, *Counterinsurgency Operations* (2004).

<sup>8</sup> Condoleezza Rice, “Iraq and U.S. Policy,” Opening Remarks before the Senate Foreign Relations Committee, Washington, DC, October 19, 2005.

Military detention plays an important role in this new paradigm for several reasons. First, the supermax cell helps to isolate hostile individuals and separate them from the broader civilian populations. As is well known, the US has in the GWOT developed a policy of “preventative detention” whereby so-called “pre-combative” individuals are captured and indefinitely detained without official charges or due process of law.<sup>9</sup> The stated goal is to “physically and psychologically separate the insurgents or opponents from both external and internal sources of support...to ‘cauterize’ around the insurgency to keep it from spreading or acquiring support.”<sup>10</sup> To this end, a massive leaflet-dropping operation promised Afghan civilians financial rewards for information leading to the detention of suspected terrorists. Thousands were arrested and classified as “unlawful enemy combatants” on the basis of unsubstantiated allegations. The policy of large-scale detention was a central component in the Iraq war as well. In his 2004 report on detention policy at Abu Ghraib, Major General George Fay stated that, “as the pace of operations picked up in late November-early December 2003, it became a common practice for maneuver elements to round up large quantities of Iraqi personnel in the general vicinity of a specified target as a cordon and capture technique.”<sup>11</sup> In this and other similar asymmetrical military conflicts, long-term solitary confinement cells facilitate this goal of “physically and psychologically” separating potentially hostile parties.

Second, supermax detention can help control populations in situations in which the use of overwhelming military force is deemed to be unfeasible or inappropriate.<sup>12</sup> Complex Irregular

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<sup>9</sup> On the policy of preventative detention, see David Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*, (New York: New Press, 2003).

<sup>10</sup> F.G. Hoffman, “Combating Fourth Generation Warfare,” in *Global Insurgency*, 191.

<sup>11</sup> Major General George Fay, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade*, 37.

<sup>12</sup> For example, the New York Times reports that in 2012, Immigration and Customs Enforcement (I.C.E.) officials held around three hundred immigrants in solitary confinement. Roughly half were held for

Warfare tends to have a complex hybrid identity, blending traditional military operations with police activity and border-control procedures. In these conflicts, detention, interrogation, and intelligence gathering, become more important than raw firepower. Timothy Dunn argues that these hybrid conflicts are motivated by a new “low intensity” military doctrine concerned with

the establishment and maintenance of social control over targeted civilian populations through the implementation of a broad range of sophisticated measures via the coordinated and integrated efforts of police, paramilitary, and military forces. One of the doctrine’s distinguishing characteristics is that military forces take on police functions, while police forces take on military characteristics.<sup>13</sup>

The supermax cell, as an architectural form, embodies this logic of police/military hybridism. In CIW and other “low-intensity operations,” such as border-security, riot-control, so-called “peace keeping” missions, etc., in which success is defined by the long-term *monopolization of violence* (rather than a declared surrender), the detention facility has become a powerful instrument of war. In these conflicts, in which it is often difficult to distinguish civilians from combatants, the ability to capture, interrogate, and indefinitely detain suspected insurgents is perceived to be more important than traditional firepower.

Third, the supermax cell helps to “constitute” the enemy as such. In traditional warfare between nation-states, the existence of the enemy is typically taken for granted. By contrast, in the GWOT, the ability to wage war at all is dependent upon the prior creation of a localizable,

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fifteen days or more. The report notes that although I.C.E. “places only about 1 percent of its jailed immigrants in solitary, this practice is nonetheless startling because those detainees are being held on civil, not criminal, charges.” Ian Urbina and Catherine Rentz, “Immigrants Held in Solitary Cells, Often for Weeks,” *New York Times*, March 24, 2013, A1.

<sup>13</sup> Quoted in Peter B. Kraska, *Militarizing the American Criminal Justice System: The Changing Roles of the Armed Forces and the Police* (Boston: Northeastern University Press, 2001), 21–22.

recognizable enemy. Maintaining popular support for complex irregular conflicts can be difficult in cases in which the enemy may seem elusive or even illusory. Such operations thus depend upon the prior (political) achievement of establishing the tangible presence of a coordinated hostile force. A 2003 memo from the Office of Legal Counsel (OLC) demonstrates how the Bush administration used long-term detention as a means to achieve this political end.<sup>14</sup> The authors of the memo argue that, “detaining and interrogating enemy combatants is an important element of the President’s authority to successfully prosecute war.”<sup>15</sup> The authors deem this to be especially important because “Al Qaeda is not a nation-state, and has no single country or geographic area as its base of operations. It has no fixed, large-scale military or civilian infrastructure.” The authors then state that “[g]iven the ongoing threat of al Qaeda attacks, the capture and interrogation of al Qaeda operatives is imperative to our national security and defense.”<sup>16</sup> Note that the OLC claims that there exists a network of terrorists, organized and recognizable but at the same time fragmented and dispersed. I submit, however, that the policy of preventative detention has helped to *constitute the enemy* as such. Detention consolidates and helps to identify an otherwise unlocalizable entity. The detention facility becomes a “territorial trap for a mobile enemy.”<sup>17</sup> In conflicts that break with the modernist/nationalist paradigm, widespread detention serves an important political function: the display of detained bodies helps to maintain a vision of the “enemy” and to justify the use of military force.

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<sup>14</sup> U.S. Department of Justice, Office of Legal Counsel, *Memorandum for William J. Haynes II, General Counsel of the Department of Defense, Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States*, March 14, 2003.

<sup>15</sup> *Ibid.*, 2.

<sup>16</sup> *Ibid.*, 3

<sup>17</sup> Joshua Comaroff, “Terror and Territory: Guantanamo and the Space of Contradiction,” *Public Culture* 19 (2007): 397.

Although the Obama administration has distanced itself from other Bush-era policies, the long-term detention of suspected terrorists and insurgents continues to be an important “tool” in the Global War on Terrorism. In fact, the legal authority to detain suspected combatants has expanded significantly under the Obama administration. Section 1021 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA 2012), for instance, codifies the authority of the U.S. military to detain:

- (1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.
- (2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.<sup>18</sup>

The NDAA significantly broadens the legal scope of the President’s detention powers in several ways. First, it codifies the authority to detain persons captured outside of the geographic boundaries of the warzone. Whereas the Bush administration primarily viewed detention as a battlefield operation, the Obama administration has “globalized” the military’s detention powers. Second, it authorizes the detention of persons, including U.S. citizens, who are suspected of having “substantially supported...associated forces.” This allows military officials to detain those who materially support belligerent groups that had no responsibility for the 9/11 attacks, including groups that did not exist at the time of attacks. This expands the legal definition of the

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<sup>18</sup> U.S. House. 112<sup>th</sup> Congress, 1<sup>st</sup> Session. *H.R. 1540, National Defense Authorization Act for Fiscal Year 2012*, (Washington: U.S. G.P.O, 2011).

enemy beyond the limits set by the original Authorization for the Use of Military Force (2001).<sup>19</sup> Third, it establishes the legal authority to detain such persons “without trial until the end of the hostilities....” In U.S. domestic law, the term “detention” typically refers to pre-trial custody; defendants are protected from prolonged detention by the constitutional right to speedy trial.<sup>20</sup> By contrast, the NDAA authorizes the *indefinite* detention of persons in the context of a “war...without specified enemies and geographic or temporal limitations.”<sup>21</sup> Fourth, and perhaps most significantly, the Bush administration initially authorized detention procedures through a variety of classified memoranda and executive orders; by contrast, the NDAA “normalizes” these extra-ordinary detention powers through an act of congress, making indefinite detention without trial permissible under U.S. federal law.

This section has argued that supermax detention cells help fulfill several related counter-insurgency objectives: they separate suspected insurgents from the broader population, they help to monopolize violence in situations in which unconditional surrender is unrealistic, and they help to constitute the presence of the enemy as such. The next section argues that these cells can produce forms of deprivation and violence tantamount to torture. It argues that the supermax cell is not a traditional architectural form, not an austere form of dwelling, not a place where violence takes place. Rather, the supermax cell is a weapon.

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<sup>19</sup>On this point, see Glenn Greenwald “Three Myths about the Detention Bill,” *Salon*, December 16, 2011, [http://www.salon.com/2011/12/16/three\\_myths\\_about\\_the\\_detention\\_bill/](http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill/)

<sup>20</sup> See, for instance, The Bail Reform Act of 1984 (18 U.S.C. § 3141)

<sup>21</sup> American Civil Liberties Union, “President Signs Indefinite Detention Bill into Law,” December 31, 2011, <http://www.aclu.org/national-security/president-obama-signs-indefinite-detention-bill-law>.

## 4.2 ON BEING DETAINED

The consequences of the widespread use of supermax cells in the Global War on Terrorism are obscured by the seemingly innocuous term “detention.” Evoking Kenneth Burke, we may say that the supermax cell complicates the typical “grammar of motives” regarding torture. Burke notes:

In a rounded statement about motives, you must have some word that names the *act* (names what took place, in thought or deed), and another that names the *scene* (the background of the act, the situation in which it occurred); also, you must indicate what person or kind of person (*agent*) performed the act, what means or instruments he used (*agency*), and the *purpose*.<sup>22</sup>

It is typically assumed that an *act* of torture must be undertaken by some *actors*, equipped with some tools (*agency*, in Burke’s terms), in some *scene*, for some *purpose*: acts of torture typically take place in interrogation rooms or other special facilities; they are undertaken by military interrogators or other agents of the state; these interrogators have access to a set of tested and approved techniques; and they use these techniques for the purpose of procuring “intelligence.” In this typical view, a detention cell is merely a “scenic feature” of the interrogation procedure—one is held in a specific space for a span time. The cell, in this vocabulary, appears to be a place where torture may take place.

This section contests this description of “detention.” It argues that a contemporary detention cell is not a “place” at all—it is a weapon. The section contends that human beings are

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<sup>22</sup> Kenneth Burke, *A Grammar of Motives*, (Berkeley: University of California Press, 1969), xv.



“altercentric;”<sup>23</sup> personal experience arises as an outcome of engagement with others and with the material world. In Heidegger’s terms, “The basic sense of the movement of factual life is caring.”<sup>24</sup> He notes that, “each one of us is what he pursues and cares for. In everyday terms, we understand ourselves and our existence by way of the activities we pursue and the things we take care of.”<sup>25</sup> This section develops this “altercentricity” thesis to show how solitary confinement degrades detainees’ relationships to space, time, and other people, thereby disrupting their capacity for “caring” being-in-the-world.

#### 4.2.1 Space

In a contemporary military detention facility, space is not a neutral “scenic” feature or a container in which things take place. Merleau-Ponty refers to a “primitive spatiality” that “merges with the body’s very being.” The body, he claims, “is not primarily in space: it is of it.”<sup>26</sup> For this reason, the controlled, degraded space of the supermax detention cell can itself become a weapon that does not require the presence of a torturer to do violence. Detainees spend twenty-three to twenty-four hours per day in 8’ x 12’ cells (a bit smaller than the size of two standard elevator cars). The visual landscape typically consists of bare steel walls, a steel door with a small slot for food, an immovable toilet/sink unit, a small window (which can provide natural light when they are not purposefully blacked out by guards), and a concrete or steel bed with a foam mattress. Some detainees receive a single hour of solitary exercise in

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<sup>23</sup> See Stein Braten ed., *On Being Moved: From Mirror Neurons to Empathy*, (Amsterdam, The Netherlands: John Benjamins Publishing Company, 2007).

<sup>24</sup> Martin Heidegger, “Phenomenological Interpretations in Connection with Aristotle: An Indication of the Hermeneutical Situation,” in *Supplements: From the Earliest Essays to Being and Time and Beyond*, (Albany: State University of New York Press), 115.

<sup>25</sup> Martin Heidegger, *The Basic Problems of Phenomenology* (Bloomington: Indiana University Press, 1988), 159.

<sup>26</sup> Maurice Merleau-Ponty, *The Phenomenology of Perception* (New York: Routledge, 2002), 171.

slightly larger security cells (often compared to “dog runs”) that are sometimes equipped with a pull-up bar but are otherwise empty.<sup>27</sup> Interrogators can control every aspect of a detainee’s sensory experience. Cells typically receive constant artificial light, which can be dimmed or brightened from an external control panel. In many cases, cells are soundproofed and equipped with speakers through which guards can broadcast speech, white noise, or disruptive sounds used for punitive purposes.<sup>28</sup>

Because they are confined in a cell with few objects and have no opportunity to see the sky or the horizon, supermax detainees are subjected to a degraded relationship to space and place. In fact, one might say that a supermax detention cell is a space that is not a place. Edward Casey defines space as “the encompassing volumetric void in which things (including human beings) are positioned” and defines place as “the immediate environment of my lived body—an arena of action that is at once physical and historical, social and cultural.”<sup>29</sup> He claims that, “the difference between space and place is one of the best-kept secrets in philosophy.”<sup>30</sup> Whereas the ancient Greeks distinguished *topos* (place) from *chora* (space), “one way of understanding modernity...is by its very neglect of this distinction.”<sup>31</sup> In modern thinking, “to be is to be *in space*, where “space” means something nonlocal and nonparticular...”<sup>32</sup> As Arendt has noted, “instead of observing natural phenomena as they were given” the modern epistemological orientation observes “nature under the conditions of [one’s] own mind, that is, under conditions

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<sup>27</sup> See Rhodes, *Total Confinement*.

<sup>28</sup> See for example, Suzanne Cusick, “‘You are in a place that is out of the world’: Music in the detention camps of the Global War on Terror” *Journal of the Society for American Music* 2 (2008): 1-26.

<sup>29</sup> Edward S. Casey, “Between Geography and Philosophy,” *Annals of the Association of American Geographers* 91 (2001): 683

<sup>30</sup> Edward S. Casey, “Smooth Spaces and Rough-Edged Places: The Hidden History of Place,” *The Review of Metaphysics* 51 (1997): 270.

<sup>31</sup> *Ibid.*, 270-271.

<sup>32</sup> *Ibid.*, 275.

won from a universal, astrophysical viewpoint, a cosmic standpoint outside of nature itself.”<sup>33</sup> From this “cosmic standpoint” a supermax detention cell is a space like any other—a certain three-dimensional volume of air. Space in this view is an empty container that benignly accommodates things it contains.

In contrast with space, a place is not “something simply physical. A place is not a mere patch of ground, a bare stretch of earth, a sedentary set of stones.”<sup>34</sup> One might say that to be “in” place means to be *involved*, rather than to be contained. Heidegger’s notion of the human being as *Dasein* (there-being) suggests this kind of involvement in place. “When I go toward the door of the lecture hall, I am already there, and I could not go to it at all if I were not such that I am there. I am never here only, as this encapsulated body; rather, I am there, that is, I already pervade the room, and only thus can I go through it.”<sup>35</sup> In Heidegger’s formulation, human beings are inevitably “ex-static”—always outside of themselves as they move through intentional “projects.”

This ability to occupy existential rather than simply physical space accounts for a certain resiliency among persons in conditions of confinement. Though one’s body may be spatially constrained, one’s projects can continue—letters, poetry, novels, political philosophy, and spiritual texts written in prisons attest to the fact that one’s “dwelling” place is not equivalent to the volume of space in which the body is confined.<sup>36</sup> However, the notion that human beings are

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<sup>33</sup>Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 288.

<sup>34</sup>Edward S. Casey, “How to Get from Space to Place in a Fairly Short Stretch of Time: Phenomenological Prolegomena,” *Senses of Place*, (Santa Fe: School of American Research Press, 1997), 26.

<sup>35</sup>Martin Heidegger, “Building Dwelling Thinking,” in *Poetry, Language, Thought*, (New York: Harper Collins, 1971), 155.

<sup>36</sup>see Gerard A. Hauser, *Prisoners of conscience: Moral vernaculars of political agency*, (Columbia, S.C: University of South Carolina Press, 2012).

essentially “projective” also entails certain vulnerabilities—and this is relatively unexamined by most theorists of space and place. The new detention and interrogation paradigm relies on the fact that human beings are inevitably involved in “place,” affected by and not simply contained within our surroundings. Donald Hebb, whose research on sensory deprivation has contributed to the development of the “no-touch” torture paradigm, has shown “how completely dependent the mind is on a close connection with the ordinary sensory environment,” and how a person can fall into a state of psychosis if “cut off from that support.”<sup>37</sup> A declassified CIA interrogation manual informed by Hebb’s work recommends that military personnel “manipulate the subject’s environment...to disrupt patterns of time, space, and sensory perceptions.”<sup>38</sup> Toward this end, interrogators have come to use the detention cell as an instrument of violence that can create a space that has none of the attributes of placehood—an *atopic* “volumetric void” that is no longer an “arena for action.”

#### 4.2.2. Time

The supermax detention cell also does violence by disrupting detainees’ normal experience of “lived” time. As with space/place, the ancient Greeks distinguished two notions of time. The term *kairos* refers to the “right moment” or “the opportune”— what Calvin Schrag describes as the element of “the good in the category of time.”<sup>39</sup> The term *chronos*, by contrast, refers to abstract chronological time, removed from the lived experience of temporality; Aristotle defines

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<sup>37</sup> Quoted in Alfred McCoy, “Mind Maze,” in Marjorie Cohn, ed., *The United States and Torture: Interrogation, Incarceration, and Abuse*, (New York: New York University Press, 2011).

<sup>38</sup> Central Intelligence Agency, Human Resources Exploitation Manual—1983 (CIA Training Manuals, National Security Archive, George Washington University, Washington, D.C.)

<sup>39</sup> Calvin Schrag, *Experience and Being*, 78.

*chronos* as “number of motion with respect to what is before and after.”<sup>40</sup> Modern thinking has generally tended to collapse the distinction between these two ancient Greek senses of time, viewing time exclusively from a “universal...cosmic standpoint.”<sup>41</sup> Lewis Mumford has argued that the clock is the paradigmatic machine of modernity: The clock, he has argued, “marks a perfection toward which other machines aspire.”<sup>42</sup> The precise measurement of chronological time “dissociated time from human events and helped create the belief in an independent world of mathematically measurable sequences: the special world of science.”<sup>43</sup>

The vocabulary of physical, chronological time is full of spatial metaphors for temporal processes.<sup>44</sup> In this vocabulary, time is assumed to move linearly, or else function as a container for things contained. In typical phrasing, we say that

we are *in* time, we say, and mark out our journey across the time-box in which we travel as if journeying up the diagonal across a rectangle. We plot just where we are, from what precise point we started and, in looking ahead, at least can point to a point beyond which we do not expect to be traveling.... When this gross spatial reduction is questioned, we quickly substitute the picture of a perfectly balanced pendulum inexorably and without variation ticking ways as we measure our progress against it. Our sequential moments are seemingly announced by a super-

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<sup>40</sup> Aristotle, *Physics*, 219b.

<sup>41</sup> Arendt, *Human Condition*, 288.

<sup>42</sup> Lewis Mumford, *Technics and Civilization*, (New York: Harcourt, Brace, and World, 1963), 17.

<sup>43</sup> Ibid.

<sup>44</sup> See Martin Heidegger, *History of the Concept of Time: Prolegomena*, (Bloomington: Indiana University Press, 1985). Heidegger argues that because of its concern with the so-called “mind independent” enduring presence of time, the modern post-Cartesian concept of temporality entails the *spatialization of time*.

celestial clock ticking away in august transcendent splendor as we traverse the spatially marked moments of our journey.<sup>45</sup>

This chronological/spatial notion of time suggests that detention is an event with a finite beginning and end—one must “do time,” counting the hours and days until one may be released. However, the experience of time in long-term solitary confinement is not reducible to the chronological duration of imprisonment: sensory and communicative deprivation disrupts the lived *experience* of time.

The ancient Greek rhetorical tradition provides an alternative temporal vocabulary that better addresses the unique violence of indefinite detention. Eric White notes that the ancient Greek term *kairos* grasps a notion of temporality in which “the living present” serves as a “point of departure or inspiration for a purely circumstantial activity of invention.”<sup>46</sup> John Poulakos argues that a “rhetor who operates mainly with the awareness of *kairos* responds spontaneously to the fleeting situation at hand, speaks on the spur of the moment, and addresses each occasion in its particularity, its singularity, its uniqueness.”<sup>47</sup> In addition to this *kairotic* attunement to the present moment, Poulakos contends that a sophistic “rhetoric of the possible” entails a heightened attention to the past and future as loci of invention.<sup>48</sup> “Because man is always transcending his actual givenness, seeking to occupy the temporal horizon by which he is

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<sup>45</sup> Charles M. Sherover, *Are We in Time?: And Other Essays on Time and Temporality*, (Evanston: Northwestern University Press, 2003), 95.

<sup>46</sup> Eric C. White, *Karionomia: On the Will-to-Invent* (Ithica: Cornell University Press, 1987), 13.

<sup>47</sup> John Poulakos, *Sophistical Rhetoric in Classical Greece*, (Columbia, S.C.: University of South Carolina Press, 1995), 61.

<sup>48</sup> “Human existence can be understood only in terms of the more fundamental notion of possibility. Man is a being thrown into an actual world but who is always projecting himself toward the openness of the non-actual or possible worlds of the past and the future. This self-projecting reveals man’s essential incompleteness and gives meaning to his present existence.” John Poulakos, “Rhetoric, the Sophists, and the Possible,” *Communication Monographs* 51 (1984): 215-224.

surrounded, human existence must be seen in the light of two fundamental absences: the ‘no longer’ and the ‘not yet.’”<sup>49</sup>

Rhetoric is animated by the lived experience of time. Deliberative rhetoric, for instance, implies both hope and uncertainty about a future that may be shaped by our decisions. Forensic rhetoric is driven by the ongoing significance of the past, the indeterminacy of which makes it materially and experientially charged; the past is, as Faulkner says, “not even past.”<sup>50</sup> Epideictic, like the present moment itself, straddles the past and future in order to affirm and invigorate by *mimesis* the constitutive features of *ethos* and *doxa*, which shape the life of the *polis*.

Further, the rhetorician, in appealing to *pathos* engages with the time of human emotions. For example, Aristotle notes that the feeling of anger involves not just a slight but also the anticipatory time of revenge.<sup>51</sup> The experience of fear requires temporal distance from the threat; otherwise fear collapses into the blur of terror and suffering.<sup>52</sup> Pity, likewise, depends upon the perception of a possible future in which one might suffer the misfortunes now suffered by another.<sup>53</sup> Simply stated, while we tend to think that emotions bubble up in a timeless now, it is rather the case that *pathos* places one within a broader sphere of time; of memory, anticipation, foresight, and regret.

Lastly, rhetoric, by contrast with the empty and infinite progression of chronological clock-time, is shaped by both *finitude* and *urgency*.<sup>54</sup> The rhetorical orientation entails finitude insofar

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<sup>49</sup> Ibid, 222.

<sup>50</sup> William Faulkner, *Requiem for a Nun* (New York: Vintage Books, 1951).

<sup>51</sup> Ibid., *Rhetoric*, 1378a

<sup>52</sup> Ibid., *Rhetoric*, 1382a

<sup>53</sup> Ibid., 1385b

<sup>54</sup> This point is made by Hans Blumenberg in "An Anthropological Approach to the Contemporary Significance of Rhetoric." *After Philosophy: End or Transformation?* (Cambridge: MIT Press, 1987),

as we are limited by perceptual capacities that are easily overwhelmed by the complexity of the lived world; and the rhetorical orientation entails urgency because despite finitude and uncertainty, rhetoric is tied to the imperative to act. Charles Sherover captures this duality nicely when he notes that the:

presumption of the reality of time is...acknowledged in any situation posing a dilemma calling for action. For it is time that forces decision and choice upon us. Our temporally structured action-commitments are themselves necessitated by our temporal situations. When we find ourselves called upon to act, we face a necessary decisional choice that cannot be refused.<sup>55</sup>

In the moment of decision, no timeless ideals or eternal truths can replace the timely grasp of the possible. In sum, placing timeliness at the center of rhetorical *praxis* calls attention to the sense that human experience unfolds in relation to foresight, memory, and hope.

Given this alternative, rhetorical notion of time as central to human experience, the violence of long-term solitary confinement can be seen more clearly. There is a temporal dimension of indefinite detention that goes beyond the accumulation of hours, days, months, and years. This is because people are not “in” time like a beetle may be in a box. If experience takes place “in” time this is so in the sense that we say we are in love, or in touch, or in a mood. That is, (as with “place”) the preposition would refer not to containment but to *involvement*. We are involved in time in a fundamental way—in anticipation and projection, in memory, and in the kairotic moment of situated action. Without memory and anticipation and, through these, the possibility of inventive action, life becomes mechanical and inhumane—producing what might

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<sup>55</sup> Sherover, *Are We In Time?*, 100.



be called “akairotic” time. In such a state, a person has “no anticipation of creative associations, and the past which he remembers is cut off from the present,” resulting in a sense of “existential meaninglessness.”<sup>56</sup> The violence of indefinite detention is, however, concealed by the more commonplace vocabulary of time as mere chronological duration. Within the latter vocabulary, one might say that a detainee in total isolation remains “in” time: his or her heart would still beat and the clock would still tick. But he or she might no longer be *involved* in the lived time of experience.

#### 4.2.3 Intersubjectivity

Lastly, the contemporary military detention cell can serve as an instrument of violence simply by denying detainees basic interpersonal interaction. Solitary confinement in penitentiaries is not a new idea; it was a central component of early nineteenth-century American prison design and many progressive architects and planners considered solitude to be an effective tool for reform and rehabilitation. When de Tocqueville and de Beaumont conducted their study of the American system in 1831, they celebrated the solitary confinement policies they found there, asking:

Can there be a combination more powerful for reformation than that of a prison which hands over the prisoner to all the trials of solitude, leads him through reflection to remorse, through religion to hope; makes him industrious by the burden of idleness, and which, whilst it inflicts the torment of solitude, makes him find a charm in the converse of pious men whom otherwise he would have seen with indifference, and heard without pleasure?<sup>57</sup>

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<sup>56</sup> Schrag, *Experience and Being*, 202.

<sup>57</sup> Gustave de Beaumont, Alexis de Tocqueville, and Francis Lieber, *On the penitentiary system in the*

Such faith in the therapeutic power of solitary confinement was not universally shared, however. In 1822, the governor of New York closed one of the world's first solitary confinement penitentiaries, concluding that the "health and constitutions of these surviving convicts had become alarmingly impaired."<sup>58</sup> One nineteenth-century observer concluded that:

there is no doubt that uninterrupted solitude tends to sour the feelings, destroy the affections, harden the heart, and induce men to cultivate a spirit of revenge, or drive them to despair...A degree of mental anguish and distress may be necessary to humble and reform the offender; but carry it too far, and he will become either a savage in his temper and feelings, or he will sink into despair.<sup>59</sup>

There was agreement, it seems, among those debating the merits of solitary confinement in the nineteenth-century that discipline, reform and rehabilitation were the desired goals of incarceration; the main question was whether solitary confinement would aid or hamper the achievement of these ends. Twenty-first century supermax military detention, however, differs in that the explicit goal is not rehabilitation and reform, but rather the achievement of total control of presumed-to-be dangerous populations.<sup>60</sup> The "sophisticated modern" cells can produce "levels of isolation and behavioral control that are more total and complete and literally dehumanized than has been possible in the past."<sup>61</sup> The purpose of detention is no longer, as it

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*United States, and its application in France.* (Philadelphia: Carey, Lea & Blanchard, 1833).

<sup>58</sup> In Hans Toch, "The Contemporary Relevance of Early Experiments with Supermax Reform," *The Prison Journal* 83 (2003): 221-228.

<sup>59</sup> Toch, "Early Experiments": 222.

<sup>60</sup> The supermax cell does, therefore, seem both to complete and at the same time overturn Foucault's theory of the penitentiary. See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, (New York: Vintage Books, 1995).

<sup>61</sup> Craig Haney, "Mental Health Issues in Long-term Solitary and 'Supermax' Confinement," *Crime & Delinquency*, 49 (2003): 127.

was for de Tocqueville and de Beaumont, to instill piety and industriousness. Instead, the goal is to place the detainee in a kind of suspended animation.

The contemporary detention cells make it possible to automate most activities; communicative interaction between detainees and guards can be almost completely eliminated. “Supermax prisoners are often monitored by camera” and “computerized locking and tracking systems allow their movement to be regulated with a minimum of human interaction (or none at all).”<sup>62</sup> Food distribution can be managed by automatic conveyor belts to further minimize the need for human presence and the possibility of communicative interaction. As Craig Haney reports, detention facilities can use “‘tele-medicine’ and ‘tele-psychiatry’ procedures in which prisoners’ medical and psychological needs are addressed by staff members who ‘examine’ and ‘interact’ with them over television screens from locations many miles away.”<sup>63</sup>

Isolation and communicative deprivation are not typically recognized as forms of violence. This is in part because modern thinking tends to view the individual as a locus of meaning and significance with “sovereignty over his or her own consciousness”<sup>64</sup> To draw upon Burke’s terminology again, this view suggests that other people are reducible to “scenic features” of one’s primarily solitary experience. By contrast, Aristotle argues that the *polis* is “prior to the individual,” and anyone able to live without interpersonal interaction must be either “a beast or a god.”<sup>65</sup> Likewise, Bakhtin notes that

Everything that pertains to me enters my consciousness, beginning with my name,  
from the external world through the mouths of others (my mother, and so forth),

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<sup>62</sup> Haney, “Mental Health Issues,” 126.

<sup>63</sup> Ibid.

<sup>64</sup> John Durham Peters, “Locke, the Individual, and the Origin of Communication,” *Quarterly Journal of Speech* 75 (1989): 393.

<sup>65</sup> Aristotle, *Politics*, 1253a.

with their intonation, in their emotional and value-assigning tonality. I realize myself initially through others.... Just as the body is formed initially in the mother's womb, a person's consciousness awakens wrapped in another's consciousness.<sup>66</sup>

From this perspective, human experience emerges in the encounter with a world of others—a world that is always already meaningful, already compelling, already evoking obligation and response. It is this *altercentricity*—our basic need for meaningful engagement with others—that makes long-term solitary confinement so destructive. A world without otherness becomes a world without selfhood. Sensory and communicative deprivation creates an environment that is no longer a world in which an intersubjective being can dwell. A life of isolation in empty space and time, then, may cease to be a properly human life at all.

Experimental psychologists studying the role of mimicry in cognitive development have produced strong empirical evidence in support of this altercentricity thesis.<sup>67</sup> In studies exploring what some have called “primary intersubjectivity,” researchers have found a basic dialogic attunement—at the neurological level—to the face, voice, and movement of others. As Stein Braten argues, the “basic organization of the mind is both dialogical and intersubjective, and that the infant has an innate capacity...to take part in an immediate dialogic dance with the actual other”<sup>68</sup> These claims are based in part on the identification of so-called “mirror neurons” by which the brain mimetically replicates the movements of other people that one observes.<sup>69</sup>

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<sup>66</sup> Mikhail Bakhtin, “From Notes made in 1970-1971,” quoted in John Stewart, *Language as Articulate Contact*, (Albany: State University of New York Press, 1995), 111.

<sup>67</sup> See for example, Stein Braten (ed.), *Intersubjective Communication and Emotion in Early Ontogeny*, (Cambridge: Cambridge University Press, 1998).

<sup>68</sup> Braten, *Intersubjective Communication*, 91.

<sup>69</sup> For a general introduction to mirror neurology, see Marco Iacoboni, *Mirroring People*, (New York: Farrar, Straus and Giroux, 2008).

This research suggests that a person is, at a neurological level, not a solitary subject contemplating others as distinct objects “out there.” Mirror-neurology offers a view of human beings as relational creatures for whom selfhood requires a capacity to become involved caringly with others. In the words of Merleau-Ponty, “It is as if the other’s intention inhabited my body and mine his.”<sup>70</sup>

Theories of primary intersubjectivity present a model of human experience that is both empirically and formally dependent upon discursive engagement with others for selfhood and, colloquially figured, sanity. One consequence of this model is that solitude need not amount to existential isolation. Even when alone, one may remain a participant in dialogic interaction with imagined communities.<sup>71</sup> Another consequence, however, is that a technology capable of silencing this primary intersubjective “speech” could threaten one’s sense of self. Pushed to extremes, such a person would remain corporeally alive but without the capacity for meaningful engagement in the world. Stuart Grassian has shown how long-term solitary confinement can produce physical and psychological effects akin to the trauma associated with torture. “Solitary confinement...can cause severe psychiatric harm. It has indeed long been known that severe restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning.”<sup>72</sup> He finds that prolonged isolation can cause “a specific psychiatric syndrome” the features of which include hyperresponsivity to external stimuli; perceptual distortions, illusions, and hallucinations; panic attacks; difficulties with thinking, concentration, and memory; intrusive obsessional thoughts; overt paranoia; and problems with impulse control, including self-directed

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<sup>70</sup> Maurice Merleau-Ponty, *Phenomenology of Perception*, (New York: Routledge Classics, 2002), 215.

<sup>71</sup> On this point, see John Poulakos, “The Components of Dialogue,” *Western Speech* 38 (1974): 199-212.

<sup>72</sup> Stuart Grassian, “Prison Reform: Commission on Safety and Abuse in America’s Prisons: Psychiatric Effects of Solitary Confinement,” *Journal of Law & Politics*, 22 (2006): 327.

violence.<sup>73</sup> Craig Haney reports that, “the absence of regular, normal interpersonal contact...creates a feeling of unreality that pervades one’s existence” in supermax confinement; “in extreme cases prisoners may literally stop behaving.”<sup>74</sup>

In Heideggerian terms, one might say that such a person would be “present-to-hand” but no longer *Dasein*. In his comments on being-in-the-world and death, Heidegger claims that by observing “the dying of the Other we can experience that remarkable phenomenon of Being which may be defined as the change-over of an entity from *Dasein*’s kind of Being to no-longer-*Dasein*. The *end* of the entity *qua* *Dasein* is the *beginning* of the same entity *qua* present-at-hand.”<sup>75</sup> Heidegger describes witnessing a more or less “natural” death in which the human being, once alive with the light of future-directed being in time, expires and becomes a lifeless corpse. The dead are only corporeally human objects and are no longer *being human*.

Long-term solitary confinement in supermax detention, however, complicates this distinction between life and death—opening up the possibility of a life that is biologically alive but no longer *Dasein*. Many post-Heideggerian theorists, responding in part to the twentieth-century concentration camp experience, have acknowledged the emergence of technologies able to produce “walking corpses”—alive, but utterly devoid of the constitutive features of human experience that Heidegger identifies. Auschwitz survivor Primo Levi remains one of the most eloquent witnesses of this liminal condition between “no-longer-*Dasein*” and physical, corporeal death.

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<sup>73</sup> Ibid, 334-337.

<sup>74</sup> Haney, “Mental Health Issues,” 139.

<sup>75</sup> Martin Heidegger, *Being and Time*, (New York: Harper and Row, 1962), 281.

They crowd my memory with their faceless presences, and if I could enclose all the evil of our time in one image, I would choose this image which is familiar to me: an emaciated man, with head dropped and shoulders curved, on whose face and in whose eyes not a trace of a thought is to be seen.<sup>76</sup>

Levi and others have thus diagnosed an anomaly within the Heideggerian analytic: an organism that remains medically and legally *human* but is no longer existentially Dasein. This being, called the “Musselmanner” by Levi, would lack the capacity for imaginative “being towards” that Heidegger argues is an essential quality of humanity as Dasein. Such persons stand at the threshold between life and death—human forms whose humanity has been forsaken.

My claim is that contemporary military detention facilities can produce such beings systematically, automatically, and in mass. The detainee, suspended for years in total isolation, may become a new kind of being “whose life is not a life and whose death is not death.”<sup>77</sup> The detention cell provides a technological solution to the perennial problem of constructing effective political prisons for enemies of the state. Despite austere environments and abusive guards, political prisoners have found ways to maintain and often strengthen oppositional identities, organize resistance, and keep hope alive.<sup>78</sup> Short of murder, there is little that the wardens and torturers in a traditional military prison can do to destroy the human capacity for imagination, identification, and action. However, the supermax cell differs insofar as it can produce conditions of extreme perceptual and communicative isolation while sustaining the corporeal “health” of the inmate. To be in a weaponized long-term solitary detention cell is to be in a world

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<sup>76</sup> Primo Levi, *Survival in Auschwitz*, (New York: Collier, 1993), 90.

<sup>77</sup> Primo Levi, in his *The Drowned and the Saved*, says this of certain prisoners of Auschwitz who from starvation, humiliation, and hopelessness have lost the thread of their humanity.

<sup>78</sup> Consider, for example, the rhetorical activity described in prison narratives such as Bobby Sands, *One Day in My Life*; Wole Soyinka, *Man Died*; Indres Naidoo, *Island in Chains*; Henri Alleg, *The Question*, to name just a few.

without otherness and, therefore, without self. It is to be in a static world devoid of memory and hope—a world within which there can be no meaningful deliberation, no anticipation, no planning. Therefore, indefinite detention can be described as unethical—in the precise sense that it dismantles *ethos* and one's capacity to draw on the resources of self-invention. Long-term isolation and communicative deprivation creates an environment that is no longer a world in which a fundamentally other-directed, being can dwell. Thus in addition to describing military detention cells as *atopic* and *akairotic*, we may say that they are also *apolitical* in the sense that they deny detainees access to a *polis*—a world of human interaction that is always already meaningful, already compelling, already evoking obligation and responsibility.

#### 4.3 CONCLUSION

This chapter has examined the principal architectural component of the current U.S. detention and interrogation program: the supermax detention cell. It has shown how the supermax cell has become an important part of a broader strategic military response to the exigencies of so-called Complex Irregular Warfare. It has then argued that the detention cell should be viewed not as a place, but as a weapon that can create conditions tantamount to torture without the interpersonal interaction that torture typically requires.

The widespread use of supermax detention in the Global War on Terrorism attests to the fact that speech is dangerous. The military has had an interest in controlling and, ideally, collapsing detainees' ability to engage rhetorically within and beyond the prison. Indeed, the current detention and interrogation policy seems to have been designed to destroy the possibility of speech as such. However, as the next chapter shows, detainees in Guantanamo Bay and



elsewhere have at times been able to harness the power of rhetoric to organize, protest, and petition for change. Their form of “speech” in these hostile environments challenges a number of basic assumptions about the art of persuasion. Specifically, the next chapter argues that in situations characterized by a radical asymmetry between interlocutors, persuasive rhetoric must create its own conditions of possibility for being heard *as* speech. It is to one such case—the 2005 Guantanamo Bay hunger strike—that the dissertation turns next.

## **5. STARVED FOR SPEECH: HERMENEUTICS OF LISTENING IN THE GUANTANAMO BAY HUNGER STRIKE**

The last chapter examined a unique architectural form, the supermax detention cell. I argued that it has emerged as a powerful counterinsurgency tool in part because it allows interrogators to severely constrain detainees' capacity for intersubjective encounters. Taking the view that rhetorical activity in the broadest sense stands as a central component of human experience, I argued that the supermax detention cell should be understood not as a "place" but as weapon, able to undermine detainees' capacity for memory, projection, and kairotic action. Indeed, the U.S. detention and interrogation policy seems to have been designed to destroy the possibility of effective speech as such. However, as the current chapter shows, detainees in Guantanamo Bay and elsewhere have at times been able to speak in a personally and politically significant way. This kind of speech, though, challenges a number of common assumptions about the art of persuasion. Specifically, this chapter shows that in order for detainees to effectively address their captors, they must first be recognized as capable of intelligible speech and action—something more than just human animals making noise. Traditional conceptions of persuasive speech take for granted that the speaker and audience share a common language and mutually acknowledge the legitimacy of each other's presence. This chapter, by contrast, examines a case in which these things became the outcomes rather than the preconditions for speech.

Specifically, this chapter focuses on a unique rhetorical event—the 2005 Guantanamo Bay hunger strike. Sometime during the third week of July 2005, Army Colonel Mike Bumgarner, the military official in charge of the Guantanamo Bay Detention Center (GTMO), found himself

persuaded.<sup>1</sup> Detainees had quietly organized a widespread collective hunger strike, and with over two hundred men moving toward the brink of death, the medical staff was overwhelmed and the prison was spiraling out of control. After years of relative voicelessness, detainees created a “rhetorical situation” charged with urgency sufficient to gain a hearing. They did so by harnessing the force of “demonstrative body rhetoric,”<sup>2</sup> and moving toward the “locus of the irreparable,” impending mass death by starvation.<sup>3</sup> In the face of this collective strike, Bumgarner listened to arguments, he negotiated, he acceded to the strikers’ demands, and the prison changed. For a brief moment, a group of detainees had succeeded in collectively transforming Guantanamo from within, establishing the conditions for a nascent deliberative, participatory rhetorical community in what must be among the least democratic places on earth. This improbable achievement was a clear example of the power of rhetoric. However, it was only temporary. Bumgarner’s judgment was soon overruled, concessions were retracted, and the military broke the strike with a policy of systematic naso-gastric force-feeding.

This chapter develops a theory of protest rhetoric with the 2005 GTMO hunger strike as its exemplary case. The chapter is motivated by a set of guiding questions: To what extent is a hunger strike a rhetorical act and the striker a rhetorician? Further, what is revealed by considering a hunger strike as a *prototypical* rhetorical act or a representative anecdote of what rhetoric is and does? How, specifically, might focusing on the hunger strike in this way warrant

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<sup>1</sup> My description of the GTMO hunger strike is drawn largely from several chapters of Clive Stafford Smith, *Eight O’clock Ferry to the Windward Side: Seeking Justice in Guantanamo Bay*. Smith is an attorney representing dozens of Guantanamo detainees and he was an eye-witness to the events as they unfolded. While I draw liberally from his descriptions, the analysis of the strike as a rhetorical act is entirely my own.

<sup>2</sup> On demonstrative rhetoric, see Gerard A. Hauser, “Incongruous bodies: Arguments for personal sufficiency and public insufficiency,” *Argumentation and Advocacy* 36, no. 1 (Summer 1999): 1–8; and Gerard A. Hauser, “Demonstrative displays of dissident rhetoric: The case of prisoner 885/63,” in *Rhetorics of Display*, ed. Lawrence Prelli, (Columbia, S.C.: University of South Carolina Press, 2006).

<sup>3</sup> J. Robert Cox, “The die is cast: Topical and ontological dimensions of the locus of the irreparable,” *Quarterly Journal of Speech* 68, no. 3 (August 1982): 227-239.

the refiguration of traditional conceptions of the speaker, the audience, and the power, or lack thereof, of the rhetorical act itself? Then, to come full circle hermeneutically, how might such a refigured understanding of rhetoric inform a critique of a specific hunger strike and the varied responses by its multiple audiences?

To address these questions, the chapter proceeds through a series of sections: I argue that traditional accounts of rhetoric as persuasion fail to account for radically transformative political rhetoric, such as a hunger strike, that must create its own conditions of possibility for being heard *as* speech. I turn to the contemporary French philosopher Jacques Rancière, whose theory of political speech helps to explain the ironic rhetoric of the hunger strike. Equipped with this conception of political speech, I engage with current scholarship on hunger striking as a rhetorical activity, and demonstrate how this literature fails to explain the unique case of protest rhetoric in Guantanamo-style supermax prisons. Simply stated, even those critics who challenge the prevailing notion of rhetoric as persuasive speech nonetheless remain fixated on the rhetor as a powerful/charismatic speaker-actor. By contrast, I argue that in order to understand the possibility of radical change in places such as Guantanamo, critics should instead focus on the significance of the *listener* (rather than the persuasive speaker) in the context of politically transformative rhetoric. After providing an account of the hermeneutics of listening in the case of the Guantanamo hunger strike, I then conclude on a less hopeful note—acknowledging the eventual collapse of understanding and the silencing of detainees’ voices through the establishment of a policy of force-feeding hunger strikers.

## 5.1 LOGOS AND POLITICAL SPEECH

The goal of this chapter is to explore the extent to which rhetoric is possible in highly controlled environments such as GTMO-style supermax prisons. As might be expected, the findings offer little to warrant optimism about the prospects for rhetorical resistance, traditionally figured. When thought of as a quasi-rational discursive exchange between independent self-conscious actors, rhetoric in GTMO is simply not possible. The traditional conception of rhetoric as *persuasion* presumes a “rhetorical situation,” the relational features of which do not obtain in places such as Guantanamo. For instance, the typical rhetorical situation presumes that speakers and audience members have the right to appear together in a public forum that exists independently of the participants and establishes the norms of decorum that underlie their deliberations and agonistic displays. Further, the speaker is presumed to have the time and *techne* needed to assess the available means of persuasion in the given situation. Likewise, the speaker must address individuals willing to become an audience—witnesses to the spectacle of speech-making and capable of reasoned judgment about what they see and hear. Moreover, the speaker and audience are presumed to share a common language, both in the colloquial sense of sharing common *doxa* and values, and in the literal sense of sharing common meanings for spoken words. Rhetoric, traditionally figured, can only take place in a shared *polis* in the broadest sense of that term.

None of these prerequisites for rhetorical action could be found in Guantanamo Bay, Cuba in 2005. The traditional conception of rhetoric as persuasive speaking must therefore be refigured in order to grasp the phenomenon of an effective resistive rhetoric in a place such as Guantanamo Bay. Indeed, I argue in this chapter that if there can be an effective rhetoric within prisons such as Guantanamo Bay, the ethos of the speaker, his or her access to a forum, the

witnessing audience, and a common language in which speech may transpire must be *outcomes* or *accomplishments* of the rhetorical act itself. It is my contention that in such situations, a successful rhetorical act will in fact refigure prevailing assumptions about what *counts as* speech. Further, I note that a traditional “speaker-centered” view of rhetoric fails to account for such a transformation; if resistive rhetoric in such an inhospitable situation becomes effective, it may best be described as an outcome of *listening* rather than speaking.

The work of the contemporary French philosopher Jacques Rancière can shed light on the radical quality of a rhetoric that emerges from persons, such as GTMO detainees, who are presumed to be politically speechless.<sup>4</sup> He argues that any assessment of the *logos* appeals of a speaker rests on a set of underlying assumptions about which symbolic acts should properly count as politically relevant speech and which are equivalent to the irrational noise of human animals.<sup>5</sup> Evoking Aristotle’s distinction in the *Politics* between *logos* and *phonē*,<sup>6</sup> Rancière notes that the “political destiny of man is attested by a sign: the possession of the logos, that is, of speech, which expresses, while the voice simply indicates.”<sup>7</sup> The distinction occurs again in the discussion of those who are presumed to be “natural-born” slaves—Aristotle suggests that they can “partake in *logos* insofar as apprehending it (*aesthesis*) but not possessing it (*hexis*).”<sup>8</sup> Such individuals can take orders, but they could not take the podium and properly speak about questions of justice, beauty, and truth.

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<sup>4</sup> On the relevance of Rancière for rhetorical studies, see Ethan Stoneman, “Appropriate Indecorum Rhetoric and Aesthetics in the Political Theory of Jacques Rancière,” *Philosophy and Rhetoric* 44, no. 2 (2011): 129–149.

<sup>5</sup> See especially, Jacques Rancière, *Disagreement: Politics and Philosophy* (Minneapolis: University of Minnesota Press, 1999).

<sup>6</sup> “Nature...has endowed man alone among the animals with the power of speech. Speech is something different from voice, which is possessed by other animals also and used by them to express pain or pleasure...” Aristotle, *Politics*, 1253a.

<sup>7</sup> Rancière, *Disagreement*, 2.

<sup>8</sup> Aristotle, *Politics* 1254b17-1255a3.

Of course, what Aristotle presents as an empirical observation (that some animals participate in *logos* but do not possess it) can be seen as part of deliberate effort to *invent* and police a fundamental inequality. As Page DuBois has argued, the institutionally enforced distinction between those with *logos* and those without (e.g. slaves, foreigners, women) lay at the heart of the ancient Athenian *polis*, shaping juridical and deliberative norms about who was presumed to have access to rhetorical forums.<sup>9</sup> According to DuBois, the Greeks invented an array of activities (e.g. juridical torture) designed to actively suppress the barbarian/slave's capacity for speech.<sup>10</sup> Through torture and other forms of violence, citizens constrained the voice of "others" – reducing it to the grunts of pleasure and pain (*phonē*)— and then used this as evidence for their own exclusive possession of "proper" speech (*logos*). DuBois concludes that "civilization" actively produced barbarism through a primary violence that renders the "other" (e.g. the slave) speechless.

In Rancière's terms, such practices constrain the realm of what might count as "proper speech" and produce an "inegalitarian distribution of the sensible" ("sensible" is taken here to mean both reasonable and apparent—i.e. able to be sensed).<sup>11</sup> Norms about access to rhetorical forums thus act as a "police" force—disciplining unruly, potentially transformative, speech. As

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<sup>9</sup> Page DuBois, *Torture and Truth* (New York: Routledge, 1991).

<sup>10</sup> Rancière offers an example of strategic enforcement of inequality drawn from Herodotus' account of the Scythian slave revolt. The Scythian warriors would blind their slaves so to better restrict their sphere of experience to their primary tasks. When the Scythians left their home to conquer Media and were away for nearly a whole generation, during which many slaves were born and raised "with their eyes open." "Looking around at the world, they reached the conclusion that there was no particular reason why they should be slaves, being born the same way their masters were and with the same attributes." They revolted. When, upon their return, the warriors took up arms to put down the rebellion, they were bested by the armed slaves. One warrior, though, articulated the "police" logic perfectly— "Take my advice— lay spear and bow aside, and let each man fetch his horsewhip, and go boldly up to them. So long as they see us with arms in our hands, they imagine themselves our equals in birth and bravery; but let them behold us with no other weapon but the whip, and they will feel that they are our slaves, and flee before us." Rancière, *Disagreement*, 12, quoting Herodotus, *The Histories*, IV, 3.

<sup>11</sup> Rancière, *Disagreement*.

Stoneman explains, Rancière uses the term “police” to denote “an inegalitarian ordering of society’s parts, one that invents a range of communicative and behavioral norms that it then distributes on the basis of the body’s nature, function, and occupation.” He further explains, “These performative and occupational attributes serve to institute a collective social body that is differentiated in terms of status, rank, and social privilege, thereby ensuring that the demos is always already excluded from playing an active, decision-making role in the organization and distribution of power.”<sup>12</sup>

Rancière uses the term “political” to describe acts that break with this “police” function. A properly political act, then, is one that contests the prevailing distribution of the sensible, finding a way to utter speech from a place formerly thought to be inhabited by an inarticulate beast. Such speech “shifts a body from the place assigned to it.... It makes visible what had no business being seen, and makes heard a discourse where once there was only place for noise.”<sup>13</sup> To reiterate, the term “policing” refers to the ordering and maintenance of the partition of the sensible/perceptible, while “the political” refers to an event that disrupts these categorical partitions. The emergence of political speech, in Rancière’s sense, entails an aesthetic transformation whereby the invisible is made visible and the inaudible is heard. As I argue in a below, this kind of transformation is, paradoxically, both an *outcome* of and *prerequisite* for effective protest rhetoric. Stated otherwise, radically transformative political rhetoric must create its own conditions of possibility.

The complexity of such a rhetorical act, one that undermines established norms about who can/may speak, is perhaps most evident in the case of a hunger strike. A hunger strike attempts

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<sup>12</sup> Stoneman, “Appropriate Indecorum” p. 134.

<sup>13</sup> Rancière, *Disagreement*, p. 30.



to turn the brute bare life of the body into a vehicle for *logos* when all other speech has “fallen on deaf ears.” The enfeebled body of the hunger striker attempts to articulate itself as a recognizable member of the class of beings that has been excluded from the domain of *logos*—what Rancière calls the “part that has no part.”<sup>14</sup> What, then, does the speech of the hunger striker’s body-in-pain say? It says, ironically, that it cannot be heard, that it cannot properly appear. It says, too, that the food and shelter of the prison constitute a weapon used against them—and that suspending one’s dependency on these animal necessities can turn the body into a voice.

This, then, is a basic “disagreement” in Rancière’s sense of the term.<sup>15</sup> The strikers, attempting to utter *political* speech must, paradoxically, articulate the fact they cannot be heard. The guards, by contrast, who use food and shelter to enforce the *police* order, must say that they hear perfectly well—but that what is being heard is not itself speech but mere “noise.” Here then, in sum, is the ironic “conversation” in which the fundamental disagreement is articulated. The strikers say both

- 1) We, whom you say are treated humanely, are being destroyed and we will fight with all we have left—our mute, suffering animal-bodies.

And, simultaneously,

- 2) We, whom you say are merely animals without voice, are human beings and speak.

The guards respond in equally paradoxical form, saying

- 1) You, who suffer, can turn only to us. The world cannot see you. A shower, a sip of water, a place to move your bowels—these basic human needs and all others will be answered by us and us alone.

And, simultaneously,

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

- 2) We, to whom you must turn, have turned away. We, your only addressees, do not hear you. What you say is necessary, therefore, is not possible.

This is the paradoxical speech situation that must be understood if one is to produce a proper assessment of the possibility of rhetoric in GTMO. In such situations, the commonplace notion of rhetoric as persuasion seems somewhat insufficient. Here, persuasion cannot be achieved through the force of the better argument, or through emotional appeals that might “warp” the judge’s rule, or through displays of virtuosity. Rather, if persuasion is to occur at all, the body-in-pain of the hunger striker must first be heard *as* speech.

Thus far, I have argued that traditional models of rhetoric as persuasive speech cannot adequately account for transformative rhetoric in hostile environments such as Guantanamo Bay. This is so in part because what serve as prerequisites for persuasion in Aristotelian conceptions of rhetoric (e.g. shared norms, access to forums, common language) are, for such rhetors, the *goals* of their symbolic action. I have argued that Rancière’s notion of political speech best characterizes this more radical kind of rhetoric that might create its own conditions of possibility in situations in which voicelessness is initially presumed. In the next section, I argue that theorists of protest rhetoric have not adequately attended to this phenomenon. This is in part because of a disciplinary focus on the virtuoso speaker as the agent of change. Indeed, even among those critics who break with the traditional notion of rhetoric as persuasive vocal *speech*, nonetheless tend to maintain the assumption that rhetoric requires a persuasive *speaker*. I, however, suggest that in order to develop a plausible account of transformative rhetoric in extremely hostile situations (such as Guantanamo), we must challenge this speaker-centered notion of persuasion. It is to that critique that I turn next.

## 5.2 BODY AS VOICE

Rhetoric, like all human action, is a function of the body. Rhetoric occurs in the throat and on the lips and tongue, and in the eyes and ears of the beholder. Speaking and listening are not disembodied, purely rational activities. When we speak and when we listen we also gaze upon the bodies of others moving in space, simulating touch, stimulating reply. Rhetorical theorists, however, have generally tended to keep their distance from embodiment, preferring to focus on reason and argument. They do not linger too long on the flesh and so miss some of its pleasures and agonies and compulsions and calls. Perhaps seduced by a philosophical vocabulary that celebrates an immaterial *logos*, rhetoricians have neglected the corporeal dimension of speech. They forget that we *are* our bodies.<sup>16</sup> They forget, too, the mutual interdependence of our words and our flesh—our bodies are the locus of our speech just as language is the home of our embodiment.

A variety of critics and theorists have begun to re-explore the role of the body as an element of rhetorical action. Among these scholars, Gerard Hauser's work on the dissident rhetoric of prisoners of conscience is exemplary for its sustained attention to the role of the body as a locus of struggle for those whose voice is otherwise silenced by oppressive regimes. For Hauser, bodily display offers prisoners the best (if also perhaps the *only*) way to access the power of rhetoric. He demonstrates that

[t]he prison is an ironically potent rhetorical site in which resistance is enacted through performances of vernacular rhetoric. The most potent of these vernacular

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<sup>16</sup> Gabriel Marcel, *Metaphysical Journal*, (Chicago: Henry Regnery Co., 1952).

resources is the political prisoner's body, which becomes the locus of a deadly political struggle with the state. Within prison, and to those observing from outside, displays of resistance function as a vernacular mode of epideictic in which "showing" may acquire the demonstrative power of irrefutable proof.<sup>17</sup>

The key for Hauser is the rhetor's ability to produce a *fantasia* in the imagination of the audience—an "emotional simulacrum" so vivid that it becomes a "symbolically constituted reality" that cannot be easily refuted or ignored.<sup>18</sup> Display rhetorics bring models of virtue before the mind's eye and "[b]y this simulacrum in the collective imaginary we also witness a demonstration of sorts that has the force of rhetorical certainty—a symbolically constituted reality."<sup>19</sup> The audience, in this model, becomes aware of prisoners' body rhetoric and so bears witness to an act of courage along with the irrefutable proof of injustice and the moral asymmetry between the actors.

Here, then, is a place where, despite institutional obstacles to *speech*, rhetoric can, nonetheless, occur. Although he does not use Rancière's terminology, we may say that for Hauser, body rhetorics can help overcome the "police" logic by which a prisoner is institutionally defined. The display of the suffering body can present an outside audience with nearly irrefutable evidence of the humanity and moral worth of the rhetor, calling to a nascent counter public beyond the prison walls and producing a kind of transubstantiation of body into word:

the spectacle of the striker's disintegrating body fixes our gaze on the authority's display of intransigence in the face of appeals for civil accommodation....Its

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<sup>17</sup> Hauser, "Demonstrative Displays," 230.

<sup>18</sup> Hauser, "Demonstrative Displays," 233.

<sup>19</sup> Ibid, 233.

rhetorical identity transforms the body into a literal manifestation of the *topos* of magnification: words magnify the wasting body's moral weight, enlarge its mass through publicity, transform its powerless physical form into a powerful moral invocation."<sup>20</sup>

Hunger strikers create a rhetoric of display, laying the body out before the public so that it can watch its wasting and bear witness to its collapse.<sup>21</sup> As Ellmann writes of the 1981 hunger strike by Irish Republican Army prisoners in the Long Kesh prison:

It was not by hungering as such but by making theater of their own starvation that the prisoners brought shame on their oppressors and captured the sympathies of their co-religionists. The more the body's flesh decayed the more its rhetoricity appeared, until its being was extinguished in meaning.<sup>22</sup>

The striker seeks to transform the material body into a locus of speech and spectacle, a sacrifice for meaning that may call and compel witnesses to action.

Thus the striker must accomplish what Scarry deems the quintessential act of *poesis*: transforming the privacy of pain, an intimate and wordless phenomenon, into something that can be made public, circulated, and exchanged.<sup>23</sup> While starvation merely *happens*, a hunger strike, by contrast, is an *act*—willfully chosen for the sake of its meaningfulness within a public world

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<sup>20</sup> Ibid, 251.

<sup>21</sup> The hunger strike and its relative, the public fast, have a long and venerable history of use as a form of “body rhetoric” designed to constitute witnesses as moral agents responsible for those whom they might otherwise ignore. In pre-Christian Ireland, a plaintiff who felt he had been wronged could fast on the doorstep of the wrongdoer. If the individual died from starvation, the alleged wrongdoer would be responsible for the plaintiff's debt.<sup>21</sup> A similar practice, called “sitting *dhurna*,” was used in ancient India. Herein lies the main action of the hunger strike: making private pain public in order through empathy and shame to motivate an intervention.

<sup>22</sup> Maud Ellmann, *The Hunger Artists: Starving, Writing, and Imprisonment* (Cambridge, Mass.: Harvard University Press, 1993), 72.

<sup>23</sup> Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985).

of signs. Moreover, a striker must presume that his or her addressees are potentially empowered to alleviate suffering and that doing so must be of some material or symbolic value (even if this is only a concern to protect one's property, as in the case of a striking slave). Thus the hunger striker enacts the primordial dialectic of selfhood and recognition, demonstrating that he or she is "willing to sacrifice life for the sake of being hailed by the other to the human world, where a sign can count as more than life itself."<sup>24</sup> Further extending Hauser's analysis, we may note that hunger striking ritualizes and poeticizes death, allowing one to become a witness to one's own death and to allow witnesses to the witnessing.<sup>25</sup> As with any rhetorical act, the witnessing implies spatial and temporal distance, discursive mediation, and the capacity for judgment about future possibility. The desires of the speaker and the interpretive powers of the audience are made stark in hunger-speech, asking: Will you join me in affirming and maintaining fidelity to this truth? Will you respond? Will you do so in time?

This is all to say that the hunger strike is a struggle between parties over control of the rhetorical status of the body. For the strike to be effective, the state must be invested in perpetuating (at least) the bare material life of the detainee (otherwise, the strike would amount to a meaningless starvation-suicide). For the striker, the body must emerge as an instrument of speech that can bear witness to one's political status (otherwise, the strike is mere theatrics or a mundane decision not to eat today—a pause between meals).<sup>26</sup> The strike, then, is an interpretive

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<sup>24</sup> John Durham Peters, "The Root of Humanity: Hegel on Language and Communication," in *Figuring the Self Subject, Absolute, and Others in Classical German Philosophy*, ed. David E Klemm and Günter Zöllner (Albany: State University of New York Press, 1997), 9.

<sup>25</sup> Human beings are relatively unique in our relationship to death. Unlike most other species, we are willing (all too willing) to kill members of our own group. We are also relatively compelled to mourn and ritualize the death of loved ones (rather than simply throwing corpses away). The hunger strike unto death occupies a kind of reflexive middle voice grammatical position in relation to these two facts—in the hunger strike one mourns one's own death.

<sup>26</sup> This is, of course, how the state would like a hunger strike to be characterized—a voluntary abstention from the day's meal. Thus, prison guards often present strikers with tempting delicacies—fresh fruit and

struggle over the *meaning* of the act, the *status* of the subject, and the *responsibilities* of the human relationship between prisoner and warden.

In sum, the work of Hauser and other theorists of “body rhetoric” suggests that we may see the hunger strike as a prototypical example of rhetorical action in general: First, a hunger strike is an address to another—in order to be effective, in order to *be* at all, the strike must be witnessed. Second, a hunger strike emerges out of deliberation regarding the available means of persuasion (in this case, the means are of course quite limited). Third, the strike attempts to influence a judgment regarding an exigency over which the audience is presumed to have some power—it is an appeal, with body and voice, to an audience, whose judgment matters. Lastly, the hunger strike demands a *timely* judgment. Indeed, a hunger strike reveals the present moment as potentially *catastrophic*.<sup>27</sup> The striker who is fasting to death in prison *right now* opens a window for kairotic response that amplifies the temporal urgency of rhetorical action in general. Judgment matters now; the time for the weighing of options is passing; deafness and brain damage have nearly taken hold; death is near; we must act.

Hauser’s work on hunger striking is valuable insofar as it amplifies rhetorical resources available to change agents who seek to reach vernacular counter-publics in order to constellate collective resistance to state power. However, for several reasons, his theory does not adequately explain the case of the Guantanamo Bay hunger strike. First, Hauser offers a paradigmatic example of strong speaker-centered rhetoric in minimalist form: an irrefutable argument produced by a combination of the speaker’s *ethos*, the authentically evoked emotions

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cheeses and warm bread (in contrast with the usual drab or nauseating prison fare)—as though the striker’s abstention was made on culinary rather than moral or political grounds.

<sup>27</sup> On time as potentially “catastrophic,” see, John Durham Peters, “Witnessing,” *Media, Culture & Society* 23, no. 6 (2001): 707–723.

of the audience, and the logico-moral clarity of the wordless bodily testimony. The result is a version of rhetorical proof in which the speaker's claims "appear self-evident," resulting in a kind of "strength analogous to logical force."<sup>28</sup> From there, it is only a short step to conflate "logical force" with quasi-physical force—"transforming the apparent weakness of subjugated bodies into extremely potent rhetorical weapons against the powers that control them....Self interrogated, self-indicted, entrenched power explodes in its dialectic with the dissident movement."<sup>29</sup> Now, if Guantanamo and other incommunicado prisons are eventually dismantled, we may in hindsight identify the 2005 hunger strike as a moment in which "entrenched power explod[ed] in its dialectic with the dissident movement" within. However, without the benefit of this hindsight, it appears that the Guantanamo hunger strike has not produced this "explosive" effect. Moreover, from the perspective of an initially hostile audience, the body-rhetoric of a hunger striker is anything but "self-evident" with the "strength analogous to logical force." Indeed, in a case such as this, the burden is to explain *how* a hunger strike could *come to appear* persuasive—that is, how a hunger strike could come to appear as human speech to which one must respond.

Further, considering body rhetoric to be equivalent to logical "proof" does not explain the transformation in relational dynamics required for persuasion in an initially hostile audience. Prior to the experience of *fantasia* and the resulting moral sentiment, what inspires a hostile audience to attend to the suffering of another in the first place? The body rhetoric literature side-steps this question to the extent that it substitutes epistemological concerns (e.g., is an appeal valid and vivid, akin to primary sensory experience or logical demonstration) for existential ones (e.g., who is speaking and by whom is the speaker heard?) Moreover, drawing the analogy

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<sup>28</sup> Hauser, "Demonstrative Displays," 235 and 249.

<sup>29</sup> Ibid, 249 and 250.



between body rhetorics and logical proof simplifies the role that the audience plays in judging rhetorical displays. Again, the crucial question is, for whom does the *fantasia* of bodily display appear as a self-evident indictment of an unjust regime? Given the analogy to logical and scientific forms of proof, the answer is clear: the display is evident to *any* reasonable, morally sound witness. More likely, however, bodily displays by prisoners of conscience are persuasive to an outside “counter-public” that is already politically and morally committed to the speaker and his or her cause. By contrast, in the case of the GTMO strike, there simply was no outside counter-public to whom the bodily displays might be addressed. At the time, the only people who knew about the hunger strike were the military personnel and the detainees’ lawyers, who would have lost their security clearance (and therefore, their ability to meet with and advocate for their clients) if they had written about or discussed what they had witnessed.<sup>30</sup>

So, if we are to assess the viability of body rhetoric as a mode of resistance in highly controlled environments such as GTMO, we will need to explain how someone not initially sympathetic to prisoners’ claims (e.g. Bumgarner) might become persuaded to concede to their demands. That is, we will need to explain the transformative act by which an initially hostile audience can open up to the possibility of a morally compelling *fantasia*. From Bumgarner’s perspective, it would be dangerous to his career and sense of self to fully “identify,” in the Burkean sense, with the prisoners.<sup>31</sup> Likewise, he would not have been “persuaded” by the moral power of the righteous striker—his job was predicated in part upon the belief that these men are enemy combatants and that his duty was to keep them incarcerated for security and intelligence purposes. Nor is it sufficient to characterize his judgment as a rational calculation of costs and benefits (e.g., relax some policies and concede to some superficial demands in order to

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<sup>30</sup> On this point, see Stafford Smith, *Eight O’clock Ferry*.

<sup>31</sup> Kenneth Burke, *A Rhetoric of Motives* (Berkeley: University of California Press, 1969).

gain more control over the situation). Bumgarner is not a rational calculating machine—to assume so does not do justice to his humanity nor does it offer a viable explanation of the phenomenon of his judgment. More importantly, to think of the strike and response as simple deliberative “negotiation” misses a key point. Negotiating partners must necessarily be relatively equal in status and recognizable to each other. Hungerstrikers, by contrast, must first *create* the conditions of relative equality under which negotiation can take place.

To summarize, “body rhetoric” scholars such as Hauser have widened the scope of the “means of persuasion” to include demonstrative acts, such as a hunger strike, that defy the traditional notion of rhetoric as quasi-logical verbal argument. However, this approach is ultimately inadequate to the case at hand to the extent that it maintains the traditional notion of rhetoric as the intentional act of a virtuous, virtuoso rhetor. That is, while the “body rhetoric” approach challenges assumptions about “speech,” it remains wedded to a somewhat traditional understanding of the role of a “speaker.” This speaker-centered conception of rhetoric cannot adequately grasp the politically significant cases in which otherwise “incommunicado” detainees presumed to be “speechless” might persuade an initially hostile audience (such as their prison guards and supervising authorities).

The next section will attempt to devise a conception of rhetorical action that better addresses the crucial question raised by the previous discussion of Rancière: how can one effectively speak and be heard within a “distribution of the sensible” that ignores the voice of the speaker *a priori*? The goal is to develop an analysis of the hunger strike that can explain the transformation in status, whereby hostile and mutually opposed parties achieved, for a moment, the common ground required for deliberation.

### 5.3 THE LISTENER

In the previous section, I suggested that a vision of the rhetorician as virtuoso *speaker* does not sufficiently explain the effect of a hunger strike in the highly controlled environment of an *incommunicado* supermax prison such as Guantanamo Bay. An audience already predisposed to see the striker as a morally virtuous political dissident might be inspired to act on his or her behalf after experiencing the *fantasia* caused by the display of a body in pain. Indeed, in such cases, this display might “acquire the demonstrative power of irrefutable proof.”<sup>32</sup> However, this analysis does not explain how someone like Col. Bumgarner might become persuaded. Within the “police” order to which he was initially committed, the claims of a hunger striker would be easily refutable—he might simply refuse to acknowledge that the strikers were “making claims” at all. Thus, if Bumgarner nonetheless found himself persuaded, it was not simply because he “listened to reason” or submitted to the “moral force” of the claims. An addressee able to break from the interpretive framework of a “police” order is not simply a passive recipient of some discourse; rather, one must become an active participant in a process of *understanding*. This is what is required if one is to hear speech that articulates a properly political disagreement (in Rancière’s sense of the term)—wherein *the status of the claim as speech is itself the message*.

To help better describe this process of active participation in the process of understanding, I propose a model of rhetorical action centered upon the hermeneutics of listening (rather than on the art of speaking). As Gadamer notes, “[h]ermeneutics may be defined as the attempt to

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<sup>32</sup> Hauser, “Demonstrative Displays,” 230.

overcome distance in areas where empathy [is] hard and agreement not easily reached.”<sup>33</sup>

Gadamer, who has offered perhaps the richest thinking on the practice of understanding, follows his teacher Heidegger in universalizing the act of understanding and placing it at the heart of his theory of everyday experience. Understanding, he argues, is

the original form of the realization of There-being, which is being-in-the-world.

Before any differentiation of understanding into the different direction of pragmatic or theoretical interest, understanding is *Dasein*’s mode of being, in that it is potentiality-for-being and ‘possibility’.... Understanding is the original character of the being of human life itself.<sup>34</sup>

Gadamer goes on to associate understanding with the capacity for “interpretation, of seeing connections, of drawing conclusions.”<sup>35</sup>

So, what is the process, in general, by which one comes to understand? “Understanding begins...when something addresses us. This is the primary hermeneutical condition.”<sup>36</sup> The state prior to the address is, of course, not a state wherein one stands as a *tabula rasa* or a pure consciousness. Rather, the listener is always already engaged in life projects, carried forth from out of one’s prior commitments, identity positions, interpretive traditions, and future-directed imaginative action. Then, the moment of address, in Gadamer’s sense of the term, comes as an encounter with an “otherness” that temporarily arrests the taken-for-granted presuppositions out of which these life projects unfold. In Levinas’ memorable phrasing, “The presence of the Other

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<sup>33</sup> Hans Georg Gadamer, “Hermeneutics of Suspicion,” Gary Shapiro and Alan Sica, eds., *Hermeneutics: Questions and Prospects* (Amherst, M.A.: University of Massachusetts Press, 1988), 57.

<sup>34</sup> Hans Georg Gadamer, *Truth and Method*, (New York: Crossroad, 1984), 230.

<sup>35</sup> *Ibid*, 231.

<sup>36</sup> *Ibid*, 266.

is equivalent to...calling into question my joyous possession of the world.”<sup>37</sup> Whether it be an unexpected passage in a text, the face of a stranger, the *punctum* of a photograph, or a Socratic question, this “other” renders the perceiver momentarily stunned with his or her expectations unsettled. Suddenly, one’s project is interrupted by the presence of “things themselves” which cannot be immediately encompassed and organized within one’s prevailing assumptions. Understanding, in the hermeneutic sense of the term, attempts to respond to this interruption by opening up to the demands it makes on one’s interpretive framework and developing a newly refigured frame or “project” sufficient to encompass the situation. Suddenly arrested by the encounter with otherness, yet wishing to carry on, one must make a judgment.<sup>38</sup>

Gadamer’s conception of understanding is influenced by Aristotle’s discussion in the *Nicomachean Ethics* (Bk. 6, Ch. 11) of *synesis*, which Gadamer describes as the capacity to make a moral judgment on behalf of another by imaginatively placing oneself in the position of that person and “undergoing the situation with him (or her).”<sup>39</sup> “Once again we discover that the person who is understanding does not know and judge as one who stands apart and unaffected but rather he thinks along with the other from the perspective of a specific bond of belonging, as if he too were affected.”<sup>40</sup>

I contend that if persuasion occurs in hostile environments such as Guantanamo, it is likely an outcome of something like understanding/*synesis*—whereby one suddenly finds oneself

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<sup>37</sup> Emmanuel Lévinas, *Totality and Infinity: An Essay on Exteriority*, Duquesne Studies. Philosophical Series ; 24; Duquesne Studies. Philosophical Series ; 24 (Pittsburgh: Duquesne University Press, 1969), 75–76.

<sup>38</sup> This is of course akin to the basic definition of rhetoric advanced by Hans Blumenberg in "An Anthropological Approach to the Contemporary Significance of Rhetoric," Kenneth Baynes, James Bohman and Thomas A. McCarthy, eds., *After Philosophy: End or Transformation?* (Cambridge: MIT Press, 1987), 429–458.

<sup>39</sup> Gadamer, *Truth and Method*, 288.

<sup>40</sup> *Ibid*, 320.

*affected* and momentarily compelled to “think along with the other” in the manner that Gadamer describes. In such cases, we may suggest that “undergoing together” is a necessary prerequisite for “persuasion” traditionally figured. Moreover, *synesis* may be a key to what Rancière describes as an aesthetic redistribution of the sensible—the moment in which what was previously perceived to be mere noise emerges as human speech.

*Synesis*, in the case of a hunger strike, requires that one refigure one’s nominal or conceptual frame within which the striker appears as a generic prisoner or enemy. “Undergoing together,” then, might awaken one to the unique particularity of the individual—a single vulnerable human life. Such an act of “listening” would likewise amplify the experience of one’s own power of judgment and intervention. Becoming a receptive audience for the striker’s speech, one is charged with response-ability and the potential for a life-saving act. Indeed, by hearing the strike *as* speech, the witness becomes an addressee of a constitutive speech act by which one comes to occupy the subject-position of an ethical respondent. Again, this hermeneutic encounter must occur *prior to* the reception and judgment of the enthymematic and rational appeals of the speaker. First and foremost, if we are moved to intervene in a hunger strike, it is because we have seen a particular suffering human body and heard in its groans not the noise of a dying beast but a human cry and a plea. Moreover, if we are “persuaded” it is because we have first heard *ourselves* being addressed and have thereby taken up the subject-position implied in the call.

This analysis of the hermeneutics of listening complicates the prevailing commonplaces about rhetoric as an art of a virtuoso speaking and about communication as message-exchange. Within that view, speech entails the presence of a skillful speechwriter who silently formulates a message, encodes it into language, and sends it to a ‘receiver’ who decodes the message and

responds.<sup>41</sup> By contrast, focusing on understanding in the sense developed above highlights the role of the *listener* rather than the virtuoso *speaker*. Here, the so-called sender and receiver are not on equal footing—the address always comes from “above” or “below” and appears first as precisely *nonsense*—a disruption of one’s framework that one must then work to organize and interpret. As Lockwood notes,

[t]he end product of rhetoric is not the speech; the end is a persuaded listener. A persuaded listener is one who is changed, one who is now ready to act or think differently, one who is in some small but fundamental way a new and different being. ...[R]hetoric, we must never forget, is not merely an art of language, it is an art of transforming souls.<sup>42</sup>

This shift in emphasis is warranted by the passage in Aristotle’s *Rhetoric*, wherein he argues that “of the three elements in speech-making—speaker, subject, and person addressed—it is the last one, the hearer, that determines the speech’s end and object.”<sup>43</sup> As Lockwood explains,

If, for Aristotle, the listener comes first, then the temporality of rhetoric is not linear, but inverted.... It is the eventual response of the hearer that determines the speech that produces that response. Thus for Aristotle, from an analytic rather than prescriptive perspective, the three elements interact in a shared time [i.e., speaker, speech, listener]: a speech is to be conceived as the simultaneous

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<sup>41</sup> For an analysis and critique of the sender-receiver model of communication, see Peters, *Speaking into the Air*, esp. Chapter Two.

<sup>42</sup> Richard Lockwood, *The Reader’s Figure: Epideictic Rhetoric in Plato, Aristotle, Bossuet, Racine and Pascal*, (Geneva: Librairie Droz, 1996), 64.

<sup>43</sup> Aristotle, *Rhetoric*, 1358a

production of the speaker who appears in it, the speech, and the listener who is (or is not, of course) persuaded by it.<sup>44</sup>

Further, in contrast with those who would argue that rhetoric is solely a practical or productive art (emphasizing the product or practice of the speaker), we might note that Aristotle's definition in Book 1, Chapter 2 refers to rhetoric as a *theoretical* art (emphasizing seeing, observing, grasping, journeying toward).<sup>45</sup> Aristotle's definition thus shifts the locus of rhetorical activity from *speaking* to the prior act of *listening* or observing potential avenues of appeal. The skilled rhetorician, then, is not just the best and most engaging speaker, but rather the one sensitive enough to observe, grasp, and understand what is there. By contrast with both the Platonic and Sophistic handbook traditions, Aristotle's rhetorician is first and foremost, not one who speaks but one who *sees* (the things themselves, in the phenomenological sense) and *hears* (the call of an address). Understanding is, then, not the accurate decoding of a message. It is the provisional refiguration of oneself and the world in the light of one's concrete involvement with what appears. Thus, failing to properly respond entails not error or deception or improper decoding of the stated message but, rather, deafness/blindness.<sup>46</sup>

#### 5.4 OBLIGATIONS

The previous sections of this chapter argued for a shift in emphasis from the side of the speaker to the side of the listener. This is because in rhetorical situations characterized by a conflict about

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<sup>44</sup> Lockwood, *Reader's Figure*, 65.

<sup>45</sup> See for example, Andrea Wilson Nightingale, *Spectacles of Truth in Classical Greek Philosophy: Theoria in Its Cultural Context* (New York: Cambridge University Press, 2004).

<sup>46</sup> Gadamer says as much in *Truth and Method*, 287.



what counts as speech, persuasion requires the prior phenomenon of “encounter,” which transforms individuals into addressees and initiates the process of understanding. This, though, raises the question: what is it that one encounters? Following a lead provided by John Caputo’s *Against Ethics*, I suggest that one encounters *obligation*. An obligation, in Caputo’s sense of the term, “is not the outcome of a dialogue, an exchange of *logoi* occurring on a level surface.”<sup>47</sup> It is not equivalent to a negotiable demand or a rational claim or an emotional appeal. Rather, an obligation

has a kind of impenetrability and density that I cannot master that neither my knowledge nor my freedom can surmount....If an obligation is ‘mine’ it is not because it belongs to me but because I belong to it. Obligation is not one more thing I comprehend and want to do, but something that intervenes upon and disrupts the sphere of what the I wants, something that troubles and disturbs the I, that pulls the I out of the circle of the same, as Levinas would say.<sup>48</sup>

This notion of “obligation” helps to describe rhetorical situations, such as the hunger strike, that are characterized by a fundamental *asymmetry* between parties that must be overcome before “reasonable” dialogue can transpire. Bumgarner’s response to the hunger strike, then, can be described thusly: faced with the shock of obligation as hunger strikers moved into proximity with death, Bumgarner experienced a moment of *synesis*— “undergoing-with” the other. This is equivalent to a temporary “redistribution of the sensible” whereby his “ready-to-hand” perception of the functional prison could no longer be maintained. As a “theoretical” rhetorician-addressee, the Colonel was able to seize available but yet unutilized alternative ways of

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<sup>47</sup> John D. Caputo, *Against Ethics: Contributions to a Poetics of Obligation with Constant Reference to Deconstruction*, Studies in Continental Thought (Bloomington, Ind.: Indiana University Press, 1993), 27.

<sup>48</sup> *Ibid.*, 8.

arranging the prison rules and procedures. By contrast with the account of hunger striking criticized earlier in this chapter, this moment of obligation need not be equivalent to a “moral awakening” or a concession to the strikers’ “irrefutable” arguments. What was required, though, was a moment of *understanding* that allowed the strike to be heard as human speech by mortal speakers approaching the catastrophe of death. Bumgarner’s participatory response to the “things themselves” reorganized the field of experience and thereby produced a temporary return to *stasis* within which the Guantanamo “project” could continue to unfold.

## 5.5 FORCE FEEDING

Bumgarner’s decision was eventually overruled by his superior officer, Major General Jay Hood. General Hood apparently felt that the concessions granted to the strikers had compromised the intelligence-gathering mission at the prison. Bumgarner might be said to have understood the prison as essentially a *dwelling* place (if austere) and to have understood the detainees as *human* beings (if enemies) with which one must live, interact, and negotiate. By contrast, Hood seemed willing to collapse the space of dwelling entirely and to refigure the detainees as mere organic life-forms to be mechanically sustained and warehoused. That is, within this latter interpretive horizon, the things themselves (detainees) are not properly human at all.

It should come as no surprise that the 2005 Guantanamo Bay hunger strike eventually failed. The detainees and officials were not simply deliberating about prison policies. Rather, their conflict was about the basic existential/political question underlying any presumably ‘reasoned’ deliberation about argumentative claims: who may speak? By conceding to strikers’ demands, the administration had acknowledged that both parties occupy a common world within

which address, appeal, deliberation, and negotiation can take place. I contend that this formal establishment of a shared world was truly radical—a redistribution of the sensible—regardless of the “content” of the speech (i.e. specific demands of the strikers). From the perspective of the state, however, the explicit purpose of a place such as Guantanamo Bay is to prevent detainees from becoming rhetors. The mission for an *incomunicado* prison such as GTMO fails if detainees transform the prison into a deliberative forum.

The administration’s eventual response—forcibly feeding detainees—attests to the significance of the threat posed by the strike. The policy was implemented some time in autumn of 2005.<sup>49</sup> Detainees were strapped to six-point restraint chairs twice daily and involuntarily fed a liquid supplement (Ensure) through nasogastric tubes. Julia Tarver, a lawyer representing several Guantanamo detainees, described the process in detail.

These large tubes—the thickness of a finger, he estimated— were viewed by the detainees as objects of torture.... [R]iot guards at Guantánamo forcibly removed these NG (nasogastric) tubes by placing a foot on one end of the tube and yanking the detainee's head back by his hair, causing the tube to be painfully ejected from the detainee's nose....Then, in front of the Guantánamo physicians—including the head of the detainee hospital— the guards took NG tubes from one detainee, and with no sanitization whatsoever, re-inserted it into the nose of a different detainee.

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<sup>49</sup> See George J Annas, “Force-feeding Prisoners and the Role of Physicians,” *The Lancet* 374, (November 2009): 1737–1738; Susan Okie, “Glimpses of Guantanamo — Medical Ethics and the War on Terror,” *New England Journal of Medicine* 353, no. 24 (2005): 2529–2534; Jonathan H. Marks, “The Silence of the Doctors,” *The Nation* (December 26, 2005).

When these tubes were re-inserted, the detainees could see the blood and stomach bile from other detainees remaining on the tubes.<sup>50</sup>

After several months of force-feeding, military officials (who, incidentally, denied these accounts of unsanitary practices and brutality) succeeded in breaking the hunger strike, reducing the number of strikers from one hundred thirty-one to just three.

To justify their policy, the administration denied the rhetorical significance of the strike and instead described the situation in terms drawn from the vocabulary of bodily care. Head doctor Capt. John Edmondson stated medical professionals at Guantanamo do not "force-feed" (which is explicitly prohibited by the AMA and WMA) but instead were committed to "providing nutritional supplementation on a voluntary basis to detainees who wish to protest their confinement by not taking oral nourishment."<sup>51</sup> Having taken an oath to "do no harm," he claimed, they simply could not allow the strikers to die. Here we can see a paradigmatic example of Foucault's claim that modern governmentality operates under the axiom "let die or make live."<sup>52</sup> We should not overlook the *rhetorical* consequences of this practice. Here quite literally, the detainees' speech was stifled and transformed into the inarticulate gurgling of a mute body. To recall the Aristotelian distinction discussed earlier, the strikers' *logos* was transformed into mere *phonē* so that detainees could be seen as apolitical animals with concerns limited to pleasures and pains.

The administration could not, it seems, simply allow detainees to starve to death. The public could too easily have *witnessed* these deaths. The spectacle of hundreds of emaciated

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<sup>50</sup> Supplemental Declaration of Julia Tarver, October 13, 2005, in Majid Abdulla al Joudi, et al. v. George Bush et al., Civil Action No. 05-301 (GK), United States District Court for the District of Columbia.

<sup>51</sup> Eric Schmitt and Tim Golden, "Force-Feeding at Guantánamo Is Now Acknowledged," *The New York Times*, February 22, 2006.

<sup>52</sup> Michel Foucault, *The History of Sexuality: An Introduction*, (Penguin Books, 1984).

corpses would have been too easily understood as evidence of war crimes. That is, death might have transformed detainees' flesh into speaking bodies, moralizing the hunger strike through the display of the human being as *object*.<sup>53</sup> By forcibly feeding detainees, the administration revealed its capacity to indefinitely suspend human beings in the threshold state between active embodiment and symbolically charged "thingliness." The ultimate failure of the GTMO hunger strike thus bears witness to the frightening fact that in an effort to destroy human rhetoricity, "police" regimes have succeeded in "swallowing what is perhaps the hardest thing in the world to swallow, since it is something that in itself, almost in its texture, has a kind of special dignity, something like a particular incapacity to be swallowed: death."<sup>54</sup>

## 5.6 CONCLUSION

This chapter has sought to theorize the possibility of effective speech in hostile environments. First, I have argued that traditional accounts of rhetoric as persuasion fail to account for radically transformative political rhetoric, such as a hunger strike. This is in part because in very hostile environments, the traditional prerequisites for persuasive speech (e.g. shared norms, access to forums, common language, etc.) cannot be taken for granted. Drawing on the work of Jacques Rancière, I have argued that in such cases, rhetorical action must produce an "aesthetic redistribution of the sensible," thereby creating its own conditions of possibility for being heard *as* speech. Following this, the chapter engaged with current scholarship on hunger striking as a rhetorical activity. I have argued that this literature fails to explain the unique case of protest

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<sup>53</sup> On the rhetorical power of the body as object, see John Durham Peters, *Courting the Abyss*, (Chicago: University of Chicago Press, 2005).

<sup>54</sup> Charles Peguy quoted in Giorgio Agamben *Remnants of Auschwitz*, (New York: Zone Books, 1999), p. 72

rhetoric in Guantanamo-style supermax prisons, in part because scholars privilege a model of the rhetor as a powerful/charismatic speaker-actor. By contrast, I have advanced a model of rhetoric focused on the hermeneutics of listening rather than on persuasive speaking, arguing that in hostile environments, persuasion requires a prior act of encounter, obligation, and understanding. Finally, the chapter has shown how the 2005 Guantanamo hunger strike was eventually broken when prison authorities adopted a policy of force-feeding detainees, transforming their speech back into inarticulate, apolitical noise from which no encounter and no understanding could arise.

These last two chapters of the dissertation have focused on the way contemporary detention policies constrain detainees' ability to engage in communicative interaction with guards, officials, and each other. Given these enormous constraints, rhetorical action in the traditional sense seems all but impossible. And, as I have argued throughout this dissertation, undermining an individual's rhetorical capacities can do great violence, severing one's connection to imagined communities and to the resources of self-invention. The next chapter continues this analysis of the basic vulnerabilities entailed by our being-in-language. If rhetorical action lies at the center of human experience, we are indeed quite vulnerable to the violence of solitary confinement and harsh interrogation. Simply stated, I argue that the destruction of rhetoric may be equivalent to the destruction of the phenomenal world. However, if this is true, the opposite may also obtain—regaining the capacity for rhetorical action may be equivalent to a kind of rebirth and reengagement with the experiential world. As this chapter shows, the theory of rhetoric developed in this dissertation implies a certain resiliency that has yet to be adequately acknowledged. I examine the rhetorical power of aesthetic experience, focusing on the experience of beauty in conditions of deprivation. I argue that a robustly aesthetic view of

rhetoric can reveal the transformative power of such an experience, which would otherwise remain obscured by more traditional models of rhetoric as persuasion.

## 6. MUSIC OF THE RAIN: RHETORIC, AESTHETICS, AND HOPE

The previous chapter has examined one attempt to reclaim the resources of rhetoric in conditions of severe deprivation, arguing in favor of a theory of rhetoric that balances the traditional focus on the speaker and scene with a renewed attention to the *act* and the *listener*. Although the approach is non-traditional, that chapter nonetheless engages with a traditional rhetorical question, theorizing the conditions under which persuasion may take place. This chapter moves even further from traditional notions of rhetoric as an instrumental art of persuasion, and pursues a model of rhetoric as a principally aesthetic enterprise. The chapter begins with a brief introduction to my case—an occasion in which a prisoner who has been subjected to torture listens to rain leaking through the roof of the prison. I argue that two common ways to describe the experience of beauty—as an objective “thing” or subjective “feeling”—fail to adequately grasp the experience depicted in this case. I claim that an aesthetic theory of rhetoric offers an alternative vocabulary better suited to address the experience of beauty and its consequences. The remainder of the chapter develops that vocabulary. I draw from Whitson and Poulakos’ study of Nietzsche’s theory of language, which reveals the character of rhetoric as a world-making and life-saving practice. Following their lead, I argue that the experience of torture and indefinite detention can leave an individual in conditions that resemble Nietzsche’s vision of a world, “the total character” of which “is chaos for all eternity—in the sense not of a lack of necessity but of a lack of order, arrangement, form, beauty, wisdom.”<sup>1</sup> In such conditions, the

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<sup>1</sup> Nietzsche, Friedrich Wilhelm, and Walter Arnold Kaufmann. 1974. *The gay science; with a prelude in rhymes and an appendix of songs*. New York,: Vintage Books, § 109.



artistry of language can produce order and form—temporary shelter in an otherwise inhospitable environment. I then reassess a set of traditional rhetorical terms in the light of this aesthetic view of rhetoric, focusing particularly on the meaning of *trope* (especially synecdoche, metaphor, and metonymy), *ethos*, *pathos* and *logos*.

## 6.1 BEAUTY BEFORE US

This section introduces the central case of the chapter, a prisoner's experience of beauty in conditions of severe deprivation. The case comes from Alicia Partnoy's *Little School*, a semi-fictionalized account of her detention and torture during Argentina's "Dirty War" (1976-1983).<sup>2</sup> In a chapter called "A Conversation Under the Rain," Alicia recounts a moment of beauty:

Shortly after lunch it had begun to rain. The smell of damp earth made her come to grips with the fact that she was still alive. She inhaled deeply and a rare memory of freedom tickled her cheekbones. The open window let some rain in... A drop fell on her forehead, just above the blindfold, and slowly began to make its way to her heart. Her heart, hard as stone, after having shrunk to dodge anguish, finally softened. Like day-old bread soaking in water, her heart was swelling and dissolving, slowly but unavoidably... When she thought she was about to cry, she heard her window close.

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<sup>2</sup> Alicia Partnoy, *The Little School: Tales of Disappearance and Survival*, (San Francisco: Midnight Editions, 1986). *The Little School* contains elements of prose fiction, poetry, and *testimonio* and it is difficult to place the text within a single genre. I refer to the main character in the text as "Alicia" in acknowledgement of Partnoy's claim that the text is not autobiographical. My use of her account of the prisoner's experience is not entirely dependent upon the empirical veracity of the narrative. Given the current chapter's adoption of an aesthetic rather than epistemological view of rhetoric, whether Alicia *really did* hear music in the rain is not the primary question. One might say that her account is *true* (i.e. it illuminates something real) whether or not it *happened*.

The narrative continues:

When almost as many drops had fallen as the days she had spent there, they placed cans under the leaks. The first four cans were making the sweetest music she had heard in a long time. For a while, she concentrated on figuring out the frequency of the drops: *clink... clonk... plunkplunk... clink... clonkpluck... plunk...clink...clonk...plop...plop....*

In time, raindrops begin to fall nearer to her cot:

She stretched out her hand and the drops found a place in her palm. She treasured five of them in the hollow of her hand, five little pools of freshness and life among all that dirtiness... She washed her hands. That contact with water, the first in more than twenty days, made her feel as if she was also washing away some of the bitterness that—mixed with filth—was clinging to her skin. She used the next few drops to wet her lips.<sup>3</sup>

Following this, the rain provides an occasion for the conversation to which the chapter title alludes. The guards at the prison strictly forbid conversation. But as the rain falls harder, it creates enough background noise to mask the comrades' whispered exchange:

She couldn't resist the temptation: "Maria Elena," she called out.

"Yes..." the answer came back in a whisper.

"I own a leak."

"Me, too."<sup>4</sup>

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<sup>3</sup> Ibid, 62-68.

<sup>4</sup> Ibid, 69.

Alicia's account touches on many common features of the experience of beauty: beauty is rejuvenating, cleansing, and vivid.<sup>5</sup> The experience of beauty can evoke memory even as it invigorates one's sense of the present moment. And though one might witness a thing of beauty in solitude, an experience of this kind often becomes a prelude to conversation—as if beauty itself sought to embolden us so that we would have the courage to share the experience and thus allow beauty to proliferate.<sup>6</sup> It is my contention that Alicia's account also reveals the experience of beauty to be a *rhetorical* phenomenon—an occasion in which “language speaks” and, in doing so, illuminates a world suddenly more sufferable and more hospitable.<sup>7</sup>

It is not immediately evident however that Alicia's aesthetic experience is a primarily rhetorical phenomenon. This is in part because contemporary rhetoricians have tended to ignore beauty and aesthetic experience more broadly; the discipline lacks terms with which to describe how beauty *speaks* and makes us addressees of its call. The ancient Greeks, to whom contemporary rhetoricians often pledge allegiance, held beauty in the highest regard.<sup>8</sup> We, however, have often neglected the idea of beauty, pursuing instead an alliance between rhetoric and power or truth.<sup>9</sup> This may in part be due to the influence of the “founding text” of the

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<sup>5</sup> I am aware that the decision to use Partnoy's words as an occasion for this kind of theoretical inquiry raises some questions. Partnoy herself comments on the proliferation of academic discourse about the literature and testimony of survivors of state violence. “More often than not, however, the needs and agendas of scholars prevail over those of the testimonial subject.” See Alicia Partnoy, “Cuando Vienen Matando: On Prepositional Shifts and the Struggle of Testimonial Subjects for Agency,” *PMLA* 125 (2006): 1665-1669. I have not tried to “speak for” Partnoy, nor to “speak with” her—instead, I have sought to take her advice and listen.

<sup>6</sup> On the notion that beauty inspires replication, see Elaine Scarry, *On Beauty and Being Just* (Princeton: Princeton University Press, 1999).

<sup>7</sup> On rhetoric as a force able to make an otherwise insufferable world more hospitable, see John Poulakos, “Special Delivery: Rhetoric, Letter Writing and the Question of Beauty,” in *The Ethos of Rhetoric*, ed. Michael J. Hyde, Studies in Rhetoric/communication (Columbia, S.C.: University of South Carolina Press, 2004).

<sup>8</sup> On this point, see Albert Camus, “Helen's Exile,” in *The Myth of Sisyphus, and Other Essays*, (New York: Knopf, (1955).

<sup>9</sup> Poulakos makes this point in “Special Delivery.”

modern discipline, Wilhelms' (1925) essay "The Literary Criticism of Oratory," which famously argued that rhetorical criticism should be concerned neither with "permanence, nor yet with beauty" but instead "with effect."<sup>10</sup> Moreover, the academic study of rhetoric has often been constrained by a philosophical vocabulary in which the artistry of language is assumed to be a distortion of epistemologically purified discourse. According to Schrag, most modern academic disciplines share a commitment to a misguided worldview that he describes as "metaphysical dualism," by which he means a view of the world divided without remainder into subjects and objects, mind and matter.<sup>11</sup> In this schema, language becomes significant only to the extent that it corresponds accurately to an extralinguistic referent.

However, it is unclear where beauty fits into a world divided between subjects and objects whose connection is mediated by epistemological language. Placed on the side of the object, beauty becomes a mere predicate quality of material entities.<sup>12</sup> That is, an object might be described as extant, composed of some specific material (e.g. marble or wood), geometrically identifiable (e.g. spherical or symmetrical), hard or soft, dull or shiny. If it is also determined to be *beautiful*, this is merely another property assumed to be circulating around the raw material thing itself. In this way, claims about beauty become subject to the same truth conditions as

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<sup>10</sup> Herbert A. Wichelns, "The Literary Criticism of Oratory," *Studies in Rhetoric and Public Speaking in Honor of James Albert Winans* (NY: Century, 1962). For a description of the essay as a "founding text," see Dilip Gaonkar, "Object and Method in Rhetorical Criticism: From Wichelns to Leff and McGee," *Western Journal of Speech Communication*, 54 (1990), 290-316.

<sup>11</sup> See Calvin O. Schrag, *Experience and Being; Prolegomena to a Future Ontology* (Evanston: Northwestern University Press, 1969). The Cartesian distinction between *res cogito* and *res estensia* stands as the iconic modern formation of this conceptual schema. But, the roots of "metaphysical dualism" stretch back much further. Heidegger argues that the Latin translations of *phusis* as *natura*, *logos* as *ratio*, and *ousia* as *substantia* were decisive steps in the creation of a world perceived to be a totality of objects grasped by rational subjects.

<sup>12</sup> On this point see Martin Heidegger, "Origin of the Work of Art," in *Poetry, Language, Thought*. (New York: Harper & Row, 1971), especially the section on "the thingness of the thing."

claims about height, weight, and the like. In such a view, words themselves have no creative potential; language seems merely to identify what is “actual” and extant independent of itself.<sup>13</sup>

Placed, by contrast, on the side of the subject, beauty becomes a mere “feeling”—a question of taste or affect and, ultimately, reducible to an amalgamation of sensory data. However, such a view is “unable to burst the cocoon of its subjectivity.”<sup>14</sup> Moreover, “in this process of interiorization, the object as presented in its objectivity is lost.”<sup>15</sup> That is, what is lost in such a view is the fact that one rarely, if ever, experiences the raw data of sensory perception. Perception is first and foremost *meaningful*—and this is especially true in the experience of beauty. Reducing aesthetic experience to a mere subjective feeling obscures the way beauty acts as a call, summoning us out of our selves and into the world. In such view, beauty can only provide a modicum of pleasure or a distraction from “reality.”

While this dualistic conception of experience seems inadequate for describing beauty in general, its problems are further amplified by considering this chapter’s main example—a prisoner listening to and feeling the rain. On one hand, the sound of raindrops falling into cans would likely not meet a music critic’s standard of “objective” beauty. How would such a critic regard the rhythm, melody, and harmony in what Alicia describes as “the sweetest music”? Removed from the conditions of its reception, the predicate “beauty” would seem to fall away, leaving just the noise of plinking cans.

It is tempting, then, to try to solve this problem by turning to the subjective pole, arguing that the music of the rain was beautiful not in itself but *for* the prisoner—beautiful because it

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<sup>13</sup> In this way, claims about beauty become subordinate to claims about truth. And, following Nietzsche, one might see this concern with truth as in turn subordinate to an over-arching will-to-power.

<sup>14</sup> Schrag, *Experience and Being; Prolegomena to a Future Ontology*, 5.

<sup>15</sup> *Ibid.*, 6.

gave her pleasure, or comfort, or a moment of distraction. However, a subjective analysis of beauty seems inadequate as well, insofar as it presumes an isolated, self-conscious individual whose taste and whim is the final arbiter of aesthetic judgment. While one might rationalize beauty as taking place “in the eye of the beholder,” the *experience* of beauty is no mere whim. Indeed, the experience of beauty is often perceived to be so immediately and undeniably real that it can break one out of solipsistic isolation and, simultaneously, “bring what is, as something that is, into the Open for the first time.”<sup>16</sup> As Alicia notes, the experience “made her come to grips with the fact that she was still alive.” That is, here beauty is not just a feeling “inside” the beholder. Beauty is not grounded on the “inner” life of an isolated subject who stands as the metaphysical bedrock of experience. Rather, in this case (and perhaps in general) it seems more fitting to say the individual’s status as a self-reflective conscious observer is an *outcome* or an *accomplishment* of, rather than the *a priori* ground for, the experience of beauty.

The example of the prisoner’s experience of music in the rain thus amplifies the inadequacy of the terms in which explanations of beauty are typically articulated. Whether seen as a property of objects or as a subjective feeling, the underlying problem remains: the subject/object schema, into which dualistic philosophy divides the world, is confounded by aesthetic experience (and “concrete, lived experience” more broadly).<sup>17</sup> Rather than toggling between the objective and subjective sides of the problem, one might avoid both horns of the dilemma by jettisoning (to the extent possible) the metaphysical vocabulary in which it is rooted, and by adopting a *rhetorical* terminology instead. However, because the rhetorical tradition has been influenced by this same metaphysical vocabulary, one must work to draw out the aesthetic dimensions of rhetorical terms that have been obscured and diluted by philosophical

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<sup>16</sup> Heidegger, “Origin of the Work of Art,” 73.

<sup>17</sup> See, Schrag, *Experience and Being; Prolegomena to a Future Ontology*.

presuppositions. It is to this task of refiguring and reclaiming an aesthetic rhetorical vocabulary that the next section of this chapter turns.

## 6.2 SPEAKING AS SUMMONS; SPEECH AS VEIL

This section refigures a set of terms from the rhetorical tradition in order to better address the experience of beauty in general, and Alicia's case specifically. This refiguration is necessary because the rhetorical tradition has been shaped (and indeed, skewed) by the same philosophical dilemmas addressed above. Applying unreconstructed rhetorical terms to aesthetic phenomena will, therefore, get us no further. If, for example, we consider rhetoric to be the art of "persuasion," we are left with a set of questions that do not shed much light on Alicia's case: who is persuaded, by whom, of what, and by what means? These "rhetorical questions" fail to grasp the case in part because they presume a set of entities and relationships—e.g. speaker, audience, speech, reason, character, emotion, etc.—that are presumed to be extant *prior to* the rhetorical act. However, I have suggested above that all of this is an *accomplishment* of rather than a condition for the experience of beauty. That is, beauty does not rely upon but *enacts* the emergence of subjectivity, objectivity, and embodied experience.

In order to develop a model of rhetoric able to do justice to the experience of beauty, I turn to Whitson and Poulakos' article, "Nietzsche and the Aesthetics of Rhetoric," which has provided among the clearest and most compelling arguments for a conception of rhetoric that is grounded in the artistry rather than epistemological value of language.<sup>18</sup> They begin with a

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<sup>18</sup> Steve Whitson and John Poulakos, "Nietzsche and the Aesthetics of Rhetoric," *The Quarterly Journal of Speech* 79, no. 2 (1993): 131–45.

critique of models of rhetoric that assume that the production of knowledge, rather than art, is the principal function of language use. Drawing upon a Nietzschean conception of language, they argue that knowledge, as understood by epistemologists, may be all together inaccessible. Somewhat more modestly stated, “the epistemic endeavor is a derivative of something greater: primordial desires, irrepressible passions, and blind drives, all of which characterize more than anything else, the make-up of the life of human beings.”<sup>19</sup> It is therefore art, rather than truth, that is essential for human flourishing because it is only art that can succeed in “ordering the chaos of life.”<sup>20</sup> The artistry of language thus allows us to establish a relationship with and shelter within the world that would otherwise be inhospitable.

In Whitson and Poulakos’ view, though rhetoric deals with appearances rather than reality, it is nonetheless essential to the human condition, because it brings order and form to life. Rhetoric “produces signs that function *not* as truth but as beautiful veils masking the chaos in which people live.”<sup>21</sup> By contrast with models of language concerned with epistemological questions, in this view rhetoric is not an “‘accessory’ to ‘real discourse.’”<sup>22</sup> Instead, it holds that the “paradigmatic tendency of language is rhetorical, not representational or referential.” Further, “language is not grounded in transcendental signifieds or extralinguistic referents; rather, it is grounded on itself; it has no grounding outside itself.”<sup>23</sup> Human experience is

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<sup>19</sup> Ibid., 132.

<sup>20</sup> Ibid., 136.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., 139.



primarily an aesthetic phenomenon and rhetoric is, first and foremost, an art of *summoning* aesthetic forms that help to compose a sufferable, inhabitable world.<sup>24</sup>

The current chapter draws on the theory of rhetoric developed by Whitson and Poulakos and provides only a shift in focus, rather than a critique. First, Whitson and Poulakos argue that “[a]n aesthetics of rhetoric treats the orator as primarily an artist....”<sup>25</sup> While I agree, this chapter explores the other side of the analogy—treating the encounter with beauty as, primarily, a rhetorical experience. This is especially important in the current case, since it is my claim that the prisoner was, in a fundamental way, *addressed* by and through the experience of beauty. Stated differently, while Whitson and Poulakos remain focused on the role of the “orator,” this chapter is concerned equally with the act and, especially, the addressee.

Second, Whitson and Poulakos attempt to persuade rhetoricians to abandon the epistemological project and, following Nietzsche’s advice, to “be content with an aesthetic view of the world.” Again, I agree. However as the cases I examine here and throughout this dissertation show, the greatest threat to life is not the epistemological impulse (which, according to Nietzsche, is itself derived from aesthetic impulses). In the midst of the chaos of a life unsheltered by violence (such as torture), both the aesthetic *and* epistemological impulses can be disabled. Indeed, the view that life is an “aesthetic phenomenon,” entails a fundamental vulnerability at the center of human experience—the destruction of one’s capacity to produce artful speech and engage with aesthetic phenomena is equivalent to the loss of the inhabitable world. This has been my basic claim throughout this dissertation. Those who have suffered the

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<sup>24</sup> Ibid., 137. In their words, “In and through their language, orators *summon* appearances that are *not* and can never be ‘complete’ descriptions of phenomenal being—their speech amounts to an imposition of aesthetic form on being.”

<sup>25</sup> Ibid., 133.

world-unmaking violence of torture need rhetoric that is able to turn the “chaotic into the orderly, the dangerous into the safe, and the hostile into the amicable.”<sup>26</sup>

### 6.3 REFIGURING RHETORICAL TERMS

Having provided an initial explanation and defense of an aesthetic alternative to epistemological models of rhetoric, this section develops the theory in greater detail by refiguring a set of key terms from the rhetorical tradition in the light of this commitment to an aesthetic view of language. First, I address *trope*—normally considered to be the most superficial element of language, I argue that given an aesthetic view of rhetoric, *tropes* are the very substance of meaningful perception. Second, I address *logos*—normally considered to be the rational core of rhetoric, I argue that given an aesthetic view of rhetoric, this association of *logos* with *ratio* cannot be maintained. Third, I address *pathos*—normally considered to be the domain of non-rational “emotional” appeals, I argue that given an aesthetic view of rhetoric, *pathos* is part of the fundamental ground of experience. Fourth, I address *ethos*—normally considered to be a set of “ethical appeals” or “appeals to character,” I argue that given an aesthetic view of rhetoric, *ethos* is better seen as a capacity to produce fitting responses within a community to which one is responsible. In each case, I develop an aesthetic alternative to the commonplace understandings of these basic rhetoric terms, not just for its own sake, but in order to shed light on the way language and aesthetic experience can, even amidst violence and great suffering, be life-saving.

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<sup>26</sup> Ibid, 137.

### 6.3.1 Trope

This section draws on Nietzsche's "Lecture Notes on Rhetoric," focusing in particular on his analysis of the role of metaphor, metonymy, and synecdoche. There, Nietzsche makes the radical claim that "language is rhetoric."<sup>27</sup> More specifically, he argues that, "the rhetorical is a further development, guided by the clear light of the understanding, of the artistic means which are already found in language."<sup>28</sup> Therefore, there is "no unrhetorical 'naturalness' of language to which one could appeal; language itself is the result of purely rhetorical arts."<sup>29</sup> In Nietzsche's view, language does not grasp or correspond with an extralinguistic world, nor does our perception. "It is not the things that pass over into consciousness, but the manner in which we stand toward them, the *pithanon* [power of persuasion (plausibility; also a thing producing illusion)]."<sup>30</sup>

In Nietzsche's radical view, perception itself proceeds rhetorically. To exemplify this claim, he offers an analysis of the role of specific tropes in the formation of "everyday" experience. For instance, he argues that linguistic description is, foremost, *synecdochic* (synecdoche is commonly understood to be the figure that allows a part to stand in for a whole). He argues that language is not only synecdochic in special cases, such as when a "rhetor says 'sail' instead of 'ship' or 'waves' instead of 'sea.'"<sup>31</sup> Rather, because "language never expresses something completely but displays only a characteristic which appears to be prominent to it," all

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<sup>27</sup> Friedrich Wilhelm Nietzsche, *Friedrich Nietzsche on Rhetoric and Language*, ed. S L Gilman, C Blair, and D J Parent (Oxford UP New York, 1989).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, 23.

<sup>31</sup> *Ibid.*

verbal description allows a part of a totality to stand in for the whole.<sup>32</sup> Further, “utterances by no means wait until our perception and experience have provided us with a many-sided, somehow respectable knowledge of things; they result immediately when the impulse is perceived.”<sup>33</sup> That is, the synecdochic power of language steps in at the initial moment of perception, isolating a part of a wider totality of possible experience and replacing the chaos of immediate sensory “impulse” with the stability and focus of a partial verbal description. Nietzsche thus suggests a tropological, and specifically synecdochic operation drives the basic perceptual accomplishment of separating figure from ground and directing attention to discrete things in the world.

Following his analysis of *synecdoche*, Nietzsche turns to *metaphor*, which he calls the “second form of the *tropus*.”<sup>34</sup> Nietzsche draws on Aristotle’s definition of metaphor, arguing that it is “the carrying over of a word whose usual meaning is something else.”<sup>35</sup> Simply stated, the act of perception requires the resources of metaphor insofar as one always sees a situation in terms of some set of terms—seeing something *as* something (rather than somehow grasping its “isness”). Drawing on the etymology of the word, we may say that “metaphor does not simply adorn our discourse; it *carries* it.”<sup>36</sup> Although Nietzsche is not explicit about the connection between synecdoche and metaphor, it seems that both tropes are parts of the basic operation of normal perception. To take a simple example, one can imagine walking barefoot on a beach. If a quick pang of pain in the foot suddenly interrupts one’s daydream, this can be described tropologically as a synecdochic separation of a “figure” from otherwise chaotic ground, drawing

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Calvin O. Schrag, *Communicative Praxis and the Space of Subjectivity* (Bloomington: Indiana University Press, 1986), 3.

attention, and becoming the singular point around which the new context of the situation is organized. Then, after this initial synechdochic isolation of a single point of perception, one fills the experience in, so to speak, metaphorically— seeing the point of pain *as* a seashell underfoot (or, alternatively, seeing it as a bad omen, or a career ending injury, or an excuse to stay home from work tomorrow, etc.).

Following the analysis of metaphor, Nietzsche turns lastly to the role of *metonymy*, which he describes as “the substitution of cause and effect.” “We say ‘the drink is bitter,’ instead of ‘it excites a particular sensation of that kind in us;’ ‘the stone is hard,’ as if hard were something other than a judgment on our part.”<sup>37</sup> To return to the example of a seashell underfoot, one would likely say, “that shell is sharp” as a metonymic turn that externalizes the initial sensation of sharpness *in the foot*. Thus, the operation of metonymy, Nietzsche suggests, allows language to hide its own artistry and project its inventions upon the seemingly solid world of “things.”

The above analysis of Nietzsche’s theory of the relationship between trope and perception is significant to the current case for three main reasons. First, and most generally, Nietzsche’s theory helps to justify an aesthetic approach to rhetoric focused on the inextricable connection between language, art, and “objects” of experience. Given this Nietzschean theory of trope, the world itself (or, at least our perception thereof) stands as a primarily aesthetic phenomenon— held in place only by the persistence of terms and the movement of turns of phrase. Experience transpires in language and language itself is rhetorical. “The power to discover and to make operative that which works and impresses...a power which Aristotle calls rhetoric, is, at the same

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<sup>37</sup> Nietzsche, *Friedrich Nietzsche on Rhetoric and Language*, 25.

time, the essence of language.”<sup>38</sup> In Heidegger’s phrasing, one might say that it is language that speaks us and all else.<sup>39</sup>

Second, Nietzsche’s theory of language sheds light on the aesthetic dimension of contemporary torture. Of course, one may say that the places where this violence unfolds are “ugly” or aesthetically “bleak.” However this is quite secondary; torture is an aesthetic phenomenon in a primary way insofar as it seeks to either overload or deprive the individual’s sensory capacities and, in turn, disrupt the rhetorical operation by which the world is brought into focus and made meaningful. That is, if the tropological movement of language is the means by which thought and experience transpires, one can do great violence to an individual simply by arresting this movement or by constraining one’s capacity to put language into operation. This is, in part, why the various “enhanced interrogation” techniques described throughout this dissertation can do damage without leaving evidentiary traces of physical abuse on the body. Indeed, Nietzsche’s theory of trope supports the basic claim, made throughout this dissertation, that dismantling a person’s capacity to use language artfully may be equivalent to the destruction of the perceivable world itself.

Third, and perhaps most importantly for the current case, Nietzsche’s theory of trope explains how the experience of beauty can be life saving. If, in the midst of filth and isolation and pain, one hears music in the raindrops, is not merely pleasant or distracting; rather, if Nietzsche’s theory obtains, then hearing rain *as* “the sweetest music” would be equivalent to restarting the movement of language that is at the center of experience itself. Alicia, hearing

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<sup>38</sup> Ibid., 21.

<sup>39</sup> Heidegger, “Language,” in *Poetry, Language, Thought*.

plinking cans and holding raindrops in her hand, sets language into movement; turning to beauty, the world turns toward her.

In sum, this section of the chapter has drawn from Nietzsche's theory of trope to advance a theory of perception and experience more broadly for which the rhetorical qualities of language use are primary. I have used this Nietzschean conception of rhetoric to support my basic claim—that human beings' reliance on and susceptibility to language accounts both for our fundamental vulnerability and for our resilient strength in the face of chaos and violence. It must be noted, though, that this view of language upsets a number of basic assumptions about the relationship between rhetoric and experience. Once the commonplace distinction between the objective/indicative and aesthetic/ornamental features of language has been abandoned, the meaning of other basic terms from the rhetorical tradition must be reconsidered. And, as the next section demonstrates, reconsidering these basic terms can help shed light on the central concern of this chapter—the movement from violence to recovery through beauty.

### 6.3.2 Logos

In previous sections of this chapter, I advocated for a model of rhetoric that abandons the distinction between the indicative and tropological elements of language, arguing that even perception itself is a rhetorical, aesthetic phenomenon. This model, however, runs counter to typical conceptions of language as primarily a mediator between subjects and objects or a means of correspondence with an extra-discursive world. The rhetorical tradition itself has been influenced by the view that aesthetic features of language are a derivation or distortion of the use of language for logical and epistemological ends. Therefore, in adopting an aesthetic theory of rhetoric, many commonplace terms in the rhetorical vocabulary must be seen anew. I have

already demonstrated how the theory transforms the typical meaning of *tropes*. The chapter turns next to three more terms—*logos*, *pathos*, and *ethos*.<sup>40</sup> In so doing, it draws upon the work of Martin Heidegger, in part because “his concern with the original meaning of words, especially of *logos*,” provides a vantage point from which to reassess the vocabulary of the rhetorical tradition.<sup>41</sup>

The Greek word “*logos*” remains among the most significant and complex terms in the rhetorical tradition. Uses and abuses of the term *logos* are varied and abundant—it has, by turns, been translated as word, language, reason, logic, argument, judgment, and rational appeal. Rhys Roberts’s popular translation of Aristotle’s *Rhetoric* renders *logos* as “speech and reason” and “apparent proof, provided by the words of the speech.”<sup>42</sup> Given the Nietzschean theory of rhetoric detailed above, which presents language as a primarily aesthetic rather than indicative or logical enterprise, the association of *logos* with “reason” cannot be maintained. In his *Being and Logos*, John Sallis suggests as much, stating that “[w]hen we regard it as self-evidently correct to allow *logos* to be taken as *ratio*, hence, as reason, we reaffirm, without even really considering the matter, one of the most overwhelmingly decisive transitions in that movement away from the Greeks that constituted the course of Western thought.”<sup>43</sup> The conflation of *logos* with *ratio* may be considered among the first and most decisive steps toward the modern theory of “metaphysical dualism” critiqued above.

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<sup>40</sup> Of course, refiguring the entire rhetorical vocabulary is beyond the scope of this chapter. My hope is that, in addition to illuminating this chapter’s central case, refiguring these basic terms can provide a starting point for subsequent work developing an aesthetic theory of rhetoric.

<sup>41</sup> John Poulakos, “The Sophists and the Possible,” *Communication Monographs*, 51 (1984): 217.

<sup>42</sup> Aristotle, *Rhetoric*, 1355b and 1356a.

<sup>43</sup> John Sallis, *Being and Logos: Reading the Platonic Dialogues* (Cambridge University Press, 1996), 14–15.



For Heidegger, the mistranslation of *logos* as *ratio* coincided with the mistranslation of *phusis* as *natura*.<sup>44</sup> He argues that the former term originally meant “what emerges from itself...the unfolding that opens itself up, the coming-into-appearance in such unfolding, and holding itself and persisting in appearance—in short, the emerging-abiding sway.”<sup>45</sup> He claims that the term *logos*, in this context, meant the “gathering” through which *phusis* is revealed.<sup>46</sup> By contrast, *natura* suggests “a representation of all things according to which they are really of a material nature.”<sup>47</sup> Said otherwise, concern with “nature” implies that the world is a “totality of entities,”<sup>48</sup> which in turn raises epistemological questions about the possibility of correct apprehension of these material things. Whereas *logos* was originally considered to “belong...to the very process in which beings become manifest, in which they come to stand in their truth,”<sup>49</sup> in this latter view, *logos* becomes an instrumental mediator permitting correspondence between a material and an ideational world. Logos thus becomes a “saying” that at best can only gesture toward a truth presumed to exist beyond the word. Truth, in turn, becomes equivalent to that which is merely “correct.”<sup>50</sup>

In order to reclaim of a sense of *logos* better suited to the aesthetic conception of rhetoric pursued in this chapter, one must abandon this notion of language as a means of correct, “objective” apprehension of the world by a “subject.” As Heidegger notes in his 1924 Lectures on Aristotle’s Rhetoric, published as *Basic Concepts of Aristotelian Philosophy*:

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<sup>44</sup> Martin Heidegger, *Introduction to Metaphysics* (New Haven: Yale University Press, 2000), 14.

<sup>45</sup> *Ibid.*, 15.

<sup>46</sup> *Ibid.*, 182.

<sup>47</sup> *Ibid.*, 16.

<sup>48</sup> For a critique of the idea of the world as a “totality of entities,” see Schrag, *Experience and Being: Prolegomena to a Future Ontology*.

<sup>49</sup> Sallis, *Being and Logos: Reading the Platonic Dialogues*, 10.

<sup>50</sup> Heidegger, *Introduction to Metaphysics*, 199.

This orientation toward subject and object must be fundamentally set aside. Not only is it the case that these basic concepts, subject/object, and what they mean, do not appear in Greek Philosophy, but even the orientation of subject/object in Greek philosophy is meaningless insofar as they are not concerned with characterizing a *mode of apprehending* the world. Instead, their concern is characterizing *being* in it.”<sup>51</sup>

The original Greek sense of *logos*, then, describes a way of being in the world in which grasping the “underlying essences” of things is of secondary importance—and in which the “appearance” and “enduring manifestation” of things is of primary concern.

In this view, *logos* is not a means of rationally apprehending things in the world—not a faculty of reason or a tool for evaluating the connection between propositions and extradiscursive material. Rather, it is the “the fundamental determination of the being of the human being as such. The human being is seen by the Greeks as *zoon logon echon*....”<sup>52</sup> Language use is therefore no mere tool but stands as the human beings’ unique way of being-in-the-world.<sup>53</sup> Stated most strongly, “Being-human...is *logos*....”<sup>54</sup> *Logos* then is not just a matter of correct judgment, “a characteristic—of adequation—that inheres in a statement;” rather it is a call, a vocative and imperative “summoning” that addresses its recipients in an aesthetic,

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<sup>51</sup> Martin Heidegger, *Basic Concepts of Aristotelian Philosophy* (Bloomington: Indiana University Press, 2009), 40.

<sup>52</sup> *Ibid.*, 14.

<sup>53</sup> Heidegger even goes so far as to say, “living, for the human being, means speaking” and that “where speaking stops...we speak of ‘death.’” *Ibid.*, 16.

<sup>54</sup> Heidegger, *Introduction to Metaphysics*, 182.

embodied way.<sup>55</sup> In this perspective, the primary function of language is not to grant access to *knowledge* but to produce *acknowledgement*—of and by the addressee, of and by the world.

The above critique of *logos* as “reasoned appeal,” is significant to the current case for three main reasons. First, this critique reclaims an aesthetic conception of *logos*. Following Heidegger, it seems the basic function of *logos* is not judgment, correspondence, or representation but *apophainesthai*, described as “letting something be seen.”<sup>56</sup> That is, *logos* is not primarily a “rational” enterprise by which extra-discursive truth may be apprehended; rather it is first and foremost an aesthetic enterprise by which the world appears and shows itself.

Second, this refiguration of “*logos*” sheds light on the aesthetic dimension of contemporary torture. Of course, one may say that torturers often use “illogical” language, deception, distortions of truth, and the like. However, given the aesthetic refiguration of the term pursued in this section, it follows that a world filled with deception and distortion would nonetheless be more tolerable—more fundamentally *inhabitable* than one in which one could not through *logos* engage with the apparent at all. That is to say, while harsh interrogation often employs language that does not “correspond” with or “represent” the extra-discursive world, this is quite secondary in comparison with the more primary attack on the *zoon logon echon*—the use of language as the basic way of being-in-the-world. To recall the distinction discussed above, the destructive use of language by interrogators is most damaging not when it distorts or manipulates *knowledge* but when it disables one’s capacity for *acknowledgment* of and by the world. In the most extreme

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<sup>55</sup> See Alphonso Lingis, *The Community of Those Who Have Nothing in Common* (Indiana University Press, 1994), 136-7. His explicit concern is to distinguish two ways of thinking about “Truth,” but the distinction is equally resonant with regards to *logos*.

<sup>56</sup> See Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (London: SCM Press, 1962).

cases, such treatment would produce not only a person who cannot speak, but also one for whom the world is no longer being spoken.

Third, this conception of *logos* helps to explain how the experience of beauty, such as the sound of “the sweetest music” in the rain, can be lifesaving. If one holds the more commonplace conception of *logos* as “reasoned argument” or “correspondence” with truth, such an experience appears to be utterly *illogical*. From this perspective, the fact that individual has heard music in the rain might serve as evidence that he or she had broken with reason and had plunged into madness. However, given the refigured view of *logos* developed in this section, the sound of the rain might be experienced as a “gathering” that “let[s] something be seen” (*apophainesthai*) and “vocatively and imperatively” summons the perceiver into a relationship with newly apparent phenomena.<sup>57</sup>

In sum, this aesthetic view of *logos* runs counter to the commonplace notion of *logos* as a means of correspondence, representation, apprehension, reason, or logic. And, this refigured conception of *logos* sheds light on often-ignored elements of the kinds of hostile environments with which this chapter is concerned. Specifically, an aesthetic view of *logos* suggests that the violence of harsh interrogation is most destructive not when it is used to manipulate or distort *knowledge*, but rather when it disables one’s capacity for *acknowledgement* by and of the world. It must be noted, though, that if this argument about *logos* obtains, other common terms in the rhetorical vocabulary must be reconsidered. For instance, the use of *pathos*—defined as “emotional appeals”—is often juxtaposed against the presumably “rational appeals” of *logos*.

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<sup>57</sup> On “vocative and imperative summoning,” see Lingis, *The Community of Those Who Have Nothing in Common*.

Decoupling *logos* and *ratio*, then, raises a number of questions about this commonplace conception of “irrational” *pathos*—and it is to these issues that the chapter turns next.

### 6.3.3 Pathos

In the previous section, I contrasted an aesthetic conception of *logos* against a view of language concerned with correct or logical apprehension. This section offers a similar analysis of the term *pathos*. Now, if one takes *logos* to be an instrument of correct apprehension, it follows that *pathos* is either superfluous or, worse, distorting. Indeed, at the start of his *Rhetoric*, Aristotle compares the use of *pathos* appeals in a speech to “warp[ing] a carpenter’s rule before using it.”<sup>58</sup> However, if one takes the former, aesthetic view of *logos*, *pathos* takes on new significance. And, as this section later demonstrates, a refigured notion of *pathos* sheds light on both violence and recovery.

In his *Basic Concepts of Aristotelian Philosophy*, Heidegger discusses the ancient Greek conception of *pathos*. Heidegger claims that the Greeks understood *pathē* to be fundamental attitudes or moods within which human experience unfolds. Now, the Greek word *pathos* is typically translated as “emotion”—a term that implies a psychological model that locates emotional states “inside” the epistemologically isolated individual. Heidegger claims that the Greeks had no such psychological model and consequently thought of the *pathē* in quite different terms. “These *pathē*, ‘affects,’ are not states pertaining to ensouled things, but are concerned with a *disposition of living things in their world*, in the mode of being positioned toward something, allowing a matter to matter to it.”<sup>59</sup> Again, “...the *pathē* are not ‘psychic

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<sup>58</sup> Aristotle, *Rhetoric*, 1354a

<sup>59</sup> Heidegger, *Basic Concepts of Aristotelian Philosophy*, 83.

experiences,’ are not ‘in consciousness,’ but are a being-taken of human beings in their full being-in-the-world.”<sup>60</sup>

In this view, *pathē* are not located within us; rather, it is we who are in *pathē*. This sense of the term is evident when we say that we are “in a mood.” Moodiness is, for Heidegger, *how* human beings engage with the world—we are not primarily “rational” beings who are occasionally swayed by emotion. *Pathos*, then, is not a secondary or superfluous feature of language use, but rather stands at the center of the human condition. As Gross argues, this conception of the *pathe* “rearticulates a neglected moment in the rhetorical tradition in which *pathos* goes beyond a psychology of the autonomous subject. Aristotelian *pathos*...serves as the very foundation for *logos*, or social discourse.”<sup>61</sup>

This conception of *pathos* is significant to the current case for three main reasons. First, it suggests that the *pathē* are rhetorical in a robust sense. For Aristotle, the *pathē* are neither purely physiological data (as scientific materialists might claim) nor authentic “feelings” of an autonomous subject (in Romanticist fashion). “Emotions in Aristotle’s are moods, temporary states of mind—not attributes of character or natural desires—and arise in large part from perception of what is publicly due to or from oneself at a given time.”<sup>62</sup> For example, Aristotle defines anger as a “painful” desire to avenge a specific public slight or belittling, coupled with a corresponding “pleasure” that arises from the fantasy of retaliation.<sup>63</sup> Here, anger is not a raw neuro-biological state; rather it is a discursive, relational accomplishment that transpires in an

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<sup>60</sup> Ibid., 133.

<sup>61</sup> Daniel M. Gross, Ansgar Kemmann, and Daniel Gross, eds., “Introduction,” in *Heidegger And Rhetoric* (Albany: SUNY Press, 2005), 27.

<sup>62</sup> George Kennedy, in Aristotle, *On Rhetoric: a Theory of Civic Discourse*, (New York: Oxford University Press, 2007).

<sup>63</sup> Aristotle, *Rhetoric*, 1378a-b

already meaningful world in which public events have consequences. Again, Aristotle is in no way conceiving of “mood” as the inner brooding of an isolated soul. Rather, a mood implies a way of engaging with the world and a future-directed course of action therein. That is, rather than thinking of emotions as taking place in a temporal “now,” the rhetorical conception of *pathos* implies a wider span of temporal engagement. Anger, fear, jealousy, pity, hopefulness, all require a situated acknowledgment of past events coupled with an imagined future in which one’s actions can shape the way those events come to fruition.

Second, this notion of *pathos* as other-than “emotional appeal” sheds light on an under-recognized dimension of harsh interrogation. Of course, a coercive interrogation does employ “emotional” appeals, in the commonplace sense of the term. Interrogators often anticipate and manipulate the emotional responses of detainees. An interrogation is, in large measure, a series of “*pathos* appeals” in the usual sense of the term—inspiring fear, anger, pity for fellow detainees, etc. However, contemporary manuals on coercive interrogation recommend procedures that go far beyond this. Rather than simply evoking emotional response, harsh interrogation of the kind studied in this dissertation actively attacks the detainee’s capacity to have rhetorically efficacious moods at all. Interrogators are encouraged to subject detainees to unpredictable and counter-intuitive interactions that disrupt “normal” emotional responses that form the entry point for engagement in the world of discursive relations. The so-called “Alice-in-Wonderland” interrogation approach, for example, can include talking in nonsensical language, responding to cooperation with anger or sorrow, rewarding non-cooperation with extravagant praise or special privileges, disrupting the normal temporal schedule of meals and sleep (e.g. serving breakfast and then, moments later, calling for evening ‘lights out’).<sup>64</sup> Here, the effect is

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<sup>64</sup> Central Intelligence Agency, *Kubark: Counterintelligence Interrogation* (1963).

not simply “psychological.” Rather, such techniques dismantle the *rhetorical* resources by which one engages with a response-able world. Again, the *pathē* are “not merely an annex of psychical processes, but are rather *the ground out of which speaking arises, and which what is expressed grows back into...*”<sup>65</sup> Therefore, this kind of radical disruption of the *pathē* affects one’s capacity to engage in meaningful action at all. Pushed to extremes, the prisoner would become utterly disconnected from all potential cognitive and relational agency. Interrogators rely on the fact that, to avoid this collapse, the detainee may give a confession or other information in order to a return to a world in which one’s words have *consequences*. Indeed, one might betray everything else in order to maintain access to the *pathe-logical* ground of rhetorical efficacy.

Third, this refigured notion of *pathos* helps explain how the experience of beauty can be life saving. I have relied on Heidegger’s reading of Aristotle to develop a conception of *pathos* as the ground of everyday “being-in-the-world,” rather than a set of persuasive “emotional appeals” as distinct from appeals that are “logical.” It follows, then, that the affective dimension of an aesthetic act can be seen in a new light. Given this perspective, an affect is not a passively received *effect* from a material world (e.g. the world of the aesthetic object) from which one is otherwise isolated. Nor does the aesthetic experience amount to an internal “feeling,” an emotional jolt or a pleasant distraction. Rather, if we follow the conception of *pathos* above, the aesthetic act is an event of engagement that invokes a world of meaning with which the perceiver can become involved. My claim is that contemporary torture techniques do not, then, only produce unpleasant emotional states. In extreme cases, they produce *a-pathe*—an inhuman, worldless blank. In a hostile environment deliberately designed to close off every

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<sup>65</sup> Heidegger, *Basic Concepts of Aristotelian Philosophy*, 176.



avenue for meaningful interaction (except for acts of confession and betrayal), the experience of beauty can potentially re-invoke an inhabitable world—a life-saving alternative to the prisoner’s false choice of returning to the normal sphere of rhetorical action only by betraying everything meaningful within it.

#### 6.3.4 Ethos

In the previous section, I argued that a refigured conception of the term *logos* required a reconceptualization of *pathos* that no longer framed its meaning as “non-rational, emotional appeal.” In this section, I turn to *ethos* and find that it too must be reconsidered, given this chapter’s commitment to a conception of rhetoric as a primarily aesthetic enterprise.

In developing an aesthetic understanding of *ethos*, one encounters a set of conceptual obstacles not unlike those faced in the attempt to reclaim a more originary sense of *pathos*. On one hand, *ethos* is often taken to be a set of non-rational appeals that manipulate audiences’ perceptions of the speaker’s character. On the other hand, *ethos* is taken to be a species of “ethics”—the science of moral behavior that focuses on the interior deliberation of the rational individual. Burdened by the legacy of rationalism and subjectivism (criticized throughout this chapter), *ethos* appears as either a distortion of, or subordinate to, logically sound apprehension. However, given this chapter’s critique of the conception of *logos* as “correct apprehension,” ethics cannot simply be a matter of conducting oneself in accord with a logically coherent conception of the good.<sup>66</sup>

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<sup>66</sup> Jean-François Lyotard and Jean-Loup. Thébaud, *Just Gaming*, (Manchester: Manchester University Press, 1985). Lyotard notes that modernist ethics depend upon a class of philosophers and scientists presumed to have the ability to see the world as it is and produce a “ceramic” model of right action against which all rhetorical acts can be judged. However, Lyotard argues that in “postmodern” conditions

In contrast with this rationalist conception, Calvin Schrag has developed a robustly rhetorical understanding of *ethos* as sphere of human action concerned with producing “fitting responses” to exigencies:

It is within the space of *ethos* that we meet rhetoric. The intentionality of the rhetorical event, its directness to the other as interlocutor and co-agent, discloses the space of *ethos* as the arena for moral discourse and action, as the abode or dwelling in which the deliberations about the morale of the community and the ways of authenticity take place.... It is at the point of intersection between rhetoric and *ethos* that value theory is transvalued and the ethical question is repostured. The ethical question is no longer an inquiry guided by theories of the moral subject and an inventory of the peculiar properties that constitute moral character, but rather becomes a question about the *fitting response* of the decentered subject in its encounter with the discourse and social practices of the other against the backdrop of the delivered tradition. The ethical requirement within the space of *ethos* is that of the fitting response.<sup>67</sup>

Schrag notes that the obligation to produce “fitting responses” does not reject “ethics” (i.e., deontological, utilitarian, or teleological models of correct behavior) in the traditional sense of the term. Rather, it resituates and recharacterizes ethical systems as various ways of working

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of plurality and the demise of “grand narratives,” doomed now (or is it blessed) to judge without determining criteria. Lyotard, like Schrag, turns then to the rhetorical tradition, with its distinction between *techné* and *phronesis*, to recover a sense of practical judgment for precarious times. He finds Aristotle, though, too piously rooted in the local judgments of a unique (and quite exclusionary) community of the Athenian city-state. Whatever contemporary society may be, it is far from the Greek *polis* full of citizens trained in a common *páideia*; judgment, if it is to be just, must be able to negotiate fitting responses between the Polis and the Pagus. Ethical action may, as Lyotard concludes, be nothing more concrete than rhetorical moments that keep the game of justice going.

<sup>67</sup> Schrag, *Communicative Praxis and the Space of Subjectivity*, 202.

through the challenge of responding to rhetorical encounters. The compelling obligation to produce a fitting response is something like an ontological precondition for ethical action. All models of ethical decision-making, whether teleological (what are the proper ends of human action), deontological (what are my unconditional duties), or utilitarian (what is the greatest good for the greatest number), attempt to address the fundamental *aporia* of obligation and the urgency of response. The world of obligation cries, “Where are you?”—*ethos* can be seen as a way of saying “Here I am.”<sup>68</sup>

As with the other terms refigured in this chapter, this conception of *ethos* is significant to the current case for three reasons. First, drawing on the distinctions raised in the earlier discussion of *logos*, we may note that “fittingness” is not a judgment about correct apprehension but rather a judgment about how things that have been gathered together and held forth appear. Fittingness in this sense straddles the discourses of both aesthetics and ethics and gestures toward the common experiential ground of both. As a hybrid ethical and aesthetic quality, fittingness emerges out of the speaker/spectator’s concrete engagement with the world—which I have described as an engagement characterized by his or her capacity for *acknowledgement* prior to his or her *knowledge*.

Second, this conception of *ethos* sheds light on the contemporary coercive interrogation scene in which, as with *pathos*, interrogation does not simply “manipulate” *ethos* but actively destroys it. That is, interrogators do not only damage the *ethos* of detainees by shaming and degrading them (though they often do); nor do they simply force the detainee to behave “unethically” (though this happens as well). Rather, at the root of the coercive interrogation is an

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<sup>68</sup> See Michael J Hyde, *The Call of Conscience: Heidegger and Levinas: Rhetoric and the Euthanasia Debate* (University of South Carolina Press, 2001).

attempt to disable one's capacity to produce fitting responses. This attack on *ethos*—on one's capacity to produce fitting responses—produces a “discontinuity of lived space and lived time, and as a peculiar fracture in the intentional structure of world experience.”<sup>69</sup> In such conditions, there can be “no sharing of lived space, no assessment of it in terms of common directions and places for the joint actualization of projects. Correspondingly, the horizon-form of lived time is restricted and flattened. The lonely self has no anticipation of creative associations, and the past which he remembers is cut off from the present.”<sup>70</sup> The assault on *ethos* disrupts one's access to doxastic interpretive traditions wherein preferred narratives of selfhood reside—one is no longer recognizable to oneself or, as in the case with culturally specific forms of humiliation, no longer recognizable as a member of one's identificatory communities. As a result, detainees may be thrust into cycles of traumatic repetition wherein the past is no longer a resource for creative rhetorical invention. As Merleau-Ponty explains:

[t]he traumatic experience does not survive as a representation in the mode of objective consciousness and as a ‘dated’ moment...I forgo my constant power of providing myself with ‘worlds’ in the interest of one of them, and for that very reason this privileged world loses its substance and eventually becomes no more than a certain dread.<sup>71</sup>

Likewise, the temporal horizon of the future dissolves—the future becomes either unimaginable as such or a collapsed future without hope for change. And, of course, without access to the

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<sup>69</sup> Schrag, *Experience and Being: Prolegomena to a Future Ontology*, 201. Note that here, Schrag is specifically discussing existential *loneliness* and not the unique forms of violence I have described as an *attack on ethos*. Nonetheless, I think his analysis still obtains insofar as this kind of “loneliness” is often the outcome of intense coercive interrogation.

<sup>70</sup> *Ibid.*, 202.

<sup>71</sup> Maurice Merleau-Ponty, *Phenomenology of Perception*, Routledge Classics (New York: Routledge, 2002), 96.

temporal ground out of which the hermeneutics of experience unfolds, the present moment collapses as well—leaving the individual in a rhetorically “dead” procession of discontinuous “nows.” The attack on *ethos* is, in this sense, an attack on the “dwelling place” of rhetorical action.

Third, this conception of *ethos*, as the capacity to produce fitting responses, helps to illuminate the rhetorical significance of the moment of beauty that has been the subject of this chapter—a prisoner who hears “the sweetest music” in the rain. The idea of producing a “fitting response” presumes on an audience of witnesses for whom an act may be fitting. As Arendt (following Kant) notes, judgments about beauty imply an imagined community (a *sensus communis*) of judging spectators.<sup>72</sup> When one beholds a beautiful object (say, a rose), one does not judge it as beautiful by way of syllogistic or determinate judging reason (e.g. All roses are beautiful; this thing before me is a rose; therefore it is beautiful). Such would be the aesthetic judgment only of a philistine disguised as an aficionado (like one who appreciates a work of art only after learning it is the work of a “great” artist). Instead, the judgment of beauty proceeds reflectively (without stable prior criteria) and with nothing but faith that others, if given the chance, would cherish this thing as beautiful too. We find ourselves in the midst of beauty, struck by the beauty of *this* particular thing and, by declaring it beautiful, thereby posit an imagined community who might agree. An aesthetic judgment evokes a world of others who might find one’s response to the perception of beauty to be fitting. Thus *ethos*—concern for producing fitting responses—implies a capacity to see from the point of view of a witness, a community beyond those in physical proximity, to which one is accountable. It further implies an observable, enduring self with a name to live up to, promises to keep, and fidelities to sustain.

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<sup>72</sup> Hannah Arendt, *Lectures on Kant’s Political Philosophy* (University of Chicago Press, 1989).

## 6.4 CONCLUSION

This chapter has examined the role of aesthetic experience in the midst of hostile environments and has established an argument for viewing aesthetic experience as a rhetorical phenomenon. The chapter has refigured a set of key terms from the rhetorical tradition in order to highlight their aesthetic qualities—focusing specifically on *trope*, *logos*, *pathos*, and *ethos*. It has argued that an aesthetic view of these key terms better reveals the character of rhetoric as a world-making, life-saving enterprise. Additionally, the chapter has argued that a consideration of hostile rhetorical situations, marked by great urgency and limited “means of persuasion,” can help enrich our theories of rhetoric. Such situations reveal the fundamental fragility of human being-in-language. But, they also reveal a basic resilience rooted in our ability to experience and be enriched by beauty.

## 7. CONCLUSION

This dissertation has sought to investigate new forms of violence that have become paradigmatic in the Global War on Terrorism. It has advanced a critique of the view that contemporary interrogation and detention provide a moderate and humane alternative to physically brutal torture. This view is premised on a model of subjectivity according to which persons are seen as pain-feeling bodies capable of effective information exchange. The dissertation has offered an alternative view of the relationship between language and embodied experience, drawn largely from the rhetorical tradition. From the vantage point provided by a rhetorical orientation, physical pain is neither a necessary nor a sufficient element of torture; the disruption of one's access to the resources of (self) invention can be a greater threat to personhood than pain. The dissertation has shown how the new techniques, therefore, are not more moderate or constrained. They are simply easier to hide and easier to justify, allowing interrogators to commit acts of "world-unmaking" violence with impunity.

This dissertation has also provided a counterargument to those who claim that torture is an exceptional or aberrant practice that is incompatible with civility and the rule of law.<sup>1</sup> I have shown that contemporary torture is technologically sophisticated, systematic, and perfectly compatible with federal law. Indeed, one peculiar fact about contemporary torture is that it has been framed as legal: in order to justify harsh interrogation and prolonged detention without trial,

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<sup>1</sup> See for example Jeremy Waldron, who claims that the prohibition on torture is an "archetype" of law in his, "Torture and Positive Law: Jurisprudence for the White House," *Columbia Law Review* 105.6 (2005): 1681-1750 and Elaine Scarry, who holds that torture is process of "unmaking civilization," in *The Body in Pain*, (New York: Oxford University Press, 1985).

states that publicly defend the ideals of human rights law create subject-positions whose occupants are deemed “worthy of” torture—legally subject to violence. This is to say that torture is not un-American or illiberal, so long as acts of state violence are preceded by officially sanctioned discourse—words that identify subjects upon whom the application of certain forms of violence is assumed to be justified and legitimate in the interest of preserving democratic values.

John Parry has argued that “[t]orture...is part of the fabric of modern legal and political life.” The practice has been used as a technology of power in the contexts of slavery, colonialism, as well as in the wars on drugs, crime, communism, illegal immigration, and now terrorism. Parry notes that “if we believe we live in a society committed to and founded upon the rule of law, then the rule of law is no certain bulwark against torture, and faith that it could be is seriously misguided.”<sup>2</sup> Americans tend to see law as a means of transcending the violence of a mythical state of nature. However, law does not only prohibit violence. Rather law *channels* violence, constraining and thereby focusing and amplifying its power.

President Obama has recently followed his predecessor in affirming the notion that there are persons for whom torture and indefinite detention may proceed lawfully. On May 21, 2009, Obama delivered a speech at the National Archives announcing his plan to close the Guantanamo Bay detention center. The setting is significant— the National Archives houses the founding documents of the United States of America, including the original U.S. Constitution. During the address, Obama announced a return to normal constitutional order and the rule of law. Much of the speech offers a vision of a redemptive reaffirmation of America’s constitutional values by a new president who presents himself as embodying its principles:

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<sup>2</sup> John Parry, “Torture Warrants,” *Albany Law Review* 71.3 (2009): 893.



I stand here today as someone whose own life was made possible by these documents. My father came to these shores in search of the promise that they offered. My mother made me rise before dawn to learn their truths when I lived as a child in a foreign land. My own American journey was paved by generations of citizens who gave meaning to those simple words – ‘to form a more perfect union.’ I’ve studied the Constitution as a student; I’ve taught it as a teacher; I’ve been bound by it as a lawyer and a legislator. I took an oath to preserve, protect, and defend the Constitution as Commander-in-Chief, and as a citizen, I know that we must never, ever, turn our back on its enduring principles for expedience sake.<sup>3</sup>

However, his substantive plan for resolving the status of the remaining detainees at Guantanamo includes a set of policy changes at odds with this idealized vision of constitutional law. There is, he claims, a category of people for whom the constitutionally guaranteed protections of due process of the law no longer apply:

Now, finally, there remains the question of detainees at Guantanamo who cannot be prosecuted yet who pose a clear danger to the American people. ...there may be a number of people who cannot be prosecuted for past crimes, in some cases because evidence may be tainted, but who nonetheless pose a threat to the security of the United States....These are people who, in effect, remain at war with the United States. ...I want to be very clear that our goal is to construct a legitimate legal framework for the remaining Guantanamo detainees that cannot be transferred. Our goal is not to avoid a legitimate legal framework. In our constitutional system, prolonged detention should not be the decision of any one man. If and when we

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<sup>3</sup> Barack Obama, “Remarks by the President on National Security,” (National Archives, 21 May 2009).

determine that the United States must hold individuals to keep them from carrying out an act of war, we will do so within a system that involves judicial and congressional oversight. And so, going forward, my administration will work with Congress to develop an appropriate legal regime so that our efforts are consistent with our values and our Constitution.

The new president, thus, signaled his acceptance of the radical paradigm shift in detention and interrogation policy developed by the Bush administration. By working to create this “legitimate legal framework” for the incommunicado, indefinite detention of individuals suspected of terrorist activity, Obama went a step further: policies articulated during the Bush administration as part of a temporary “state of emergency” had now become part of “normal” law.

This dissertation has sought to develop a critique of violence and violation that resists the moralistic inclination to say that torture is wrong because it is barbaric, or irrational, or against God’s law, or incompatible with practical reason. This is in part because that kind of critique has often been used to justify further acts of violence (to defend “civilization” from barbarism). Nietzsche has shown how the moral vocabulary, and the philosophical-theological orientation more broadly, masks a violent will-to-power. He identifies a “desperate hope for a non-contingent and powerful ally” at the heart of “Platonism, of religious insistence on divine omnipotence, and of Kantian moral philosophy.”<sup>4</sup> By contrast, this dissertation has sought to address broad questions about language, experience, violence, and obligation without moral orthodoxy and without the philosophical presumptions that one’s words might grasp a higher truth or a deeper essence. It has not attempted to strip our illusions about torture away and reveal

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<sup>4</sup> Richard Rorty, “Human Rights, Rationality and Sentimentality,” in *The Politics of Human Rights*, Obrad Savic, ed. (New York: Verso, 1999), 78.

the bare truth. Instead, it has attempted only to broaden the current vocabulary in a way that helps to highlight aspects of the phenomenon that were otherwise obscured and, potentially, to open pathways for action that were previously unseen.

In addition to showing how a rhetorical orientation can illuminate the phenomenon of torture, I have also argued that focusing on the subject of torture can help enrich our understanding of rhetoric. First, by focusing on torture, this dissertation has drawn attention to the relationship between rhetoric and violence. From a philosophic orientation, violence and violation might be justified if seen as a means toward some higher purpose or a consequence of the individual's violation of some universal law. The rhetorical orientation, in contrast, offers no such cosmic solace; it acknowledges that force can turn a human life into a disaster—a total loss that cannot be recovered or redeemed. Many have noted that rhetoric is the domain of things that can be otherwise. This implies that the world can be improved, made more hospitable, more beautiful, and more just. However, it also implies that the world could be made *worse*—promises can be broken, lives can be ruined, communities can collapse. By focusing on instances of violence and violation, this dissertation has sought to amplify this under-acknowledged consequence of the rhetorical orientation and to balance the joyful spirit of a rhetoric of the possible with the recognition of the fact that disasters are possible too.

Second, by focusing on contemporary torture, this dissertation has sought to broaden and complicate the current disciplinary turn toward body-rhetoric. In contrast to those whom Nietzsche would describe as “despisers of the body,” many critics have recently come to affirm that the subject of rhetoric is an embodied subject.<sup>5</sup> Debra Hawhee, for instance, claims that

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<sup>5</sup> As Schrag states, “the body is the locus of my action. Through my body I appropriate the world as a field of activity. By body is wherever there is a task to be performed or a project to be carried through.”

“rhetoric has long been intertwined with bodily matters; it’s just that our Aristotelian commitments to thought and reason have historically produced trained incapacities, most notably our difficulty theorizing the body’s relationship to rhetoric.”<sup>6</sup> She notes how the body has historically functioned as a site of rhetorical production and performance and shows how ancient Athenians drew an analogy between physical and rhetorical prowess. In this view this body is not a container for a thing (the mind) contained; corporeality is not a limit to our otherwise unencumbered spirit.

Addressing the subject of torture, however, draws attention to the fact that the body is not only a locus of invention, but also a recipient of the words and actions of others. The embodied subject is not only an actor but also a sufferer. Whereas Hawhee’s work focuses on fit, healthy, athletic, beautiful, expressive bodies, this dissertation has highlighted the role rhetoric can play in breaking bodies—in making them ugly, and dysfunctional.<sup>7</sup> Focusing on those who suffer might generate a broader understanding of “body-rhetoric” and draw attention to forms of speech—such as the cry, the plea, the whisper, the mutter, the moan—that border the realms of unintelligible noise and silence.

Third, focusing on the subject of torture balances the speaker-centered view of the rhetorical tradition with a renewed attention to the *listener*. I have sought to amplify the sense in which rhetoric is, perhaps first and foremost, a call, an appeal for judgment, for help, for witnessing, for response. Though we tend to think of the speaker as a kind of strong soul, able to

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Likewise William James notes that “The world experienced comes at all times with our body as its centre, centre of vision, centre of action, centre of interest.”

<sup>6</sup> Debra Hawhee, *Bodily Arts: Rhetoric and Athletics in Ancient Greece* (Austin: University of Texas Press, 2006), 349.

<sup>7</sup> The ancient Greek poetic tradition offers compelling images of the way that broken bodies can speak: Hector’s corpse dragged through the dirt; Hecuba on all fours, barking like a dog; Oedipus bleeding; Io, wandering like a beast; Antigone screaming from her tomb; Polynices, unburied, rotting in the sun.

act in a way that makes things happen, there is a sense in which every rhetorician is a suppliant. One speaks because one must, because of the inevitable futility of mute solitary action, because the judgment of another is needed. Someone calls out and, as addressees of a call, we strain to hear, to understand, and to respond.

Shifting attention from the speaking to listening, I have advocated for a notion of rhetoric that is attuned to the language of obligation. Obligation is, as Caputo notes, something other than “answering the call of Being, or of the History of Being, or of the Voice of God.” It is, in contrast, “an earthbound signal, a superficial-horizontal communication between one human being and another, a certain line of force that runs along the surface upon which you and I stand: the obligation I have to you (and you to me, but this is different) and both of ‘us’ to ‘others.’” In short, “obligation happens.”<sup>8</sup> We become obligated by speech that calls us to identify as addressees of a demand and to respond in a fitting way.

This turn toward obligation might offer a complement to the view of rhetoric as a discourse of the possible—positing a rhetoric of the impossible. A rhetoric of the possible affirms that all can be invented and reinvented, that all is negotiable and transformable, that we are never bound to the “actual,” never limited by the “here and now.” The language of obligation, by contrast, binds us (*ob-ligio*) to another in a non-negotiable demand; it comes as a sound (perhaps it is a voice) that one cannot understand but cannot ignore. A rhetoric of the impossible would have us consider not only beautiful speeches but also choking, sputtering failures; speech by those who have no proper vocabulary; those who have been made mute by force; those who have no forum, no *doxa*, no *ethos*; those for whom *logos* has come asunder; those for whom language no longer

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<sup>8</sup> John D. Caputo, *Against Ethics: Contributions to a Poetics of Obligation with Constant Reference to Deconstruction*, (Bloomington: Indiana University Press, 1993).

speaks. A rhetoric of the impossible, however, would not be entirely without hope. In the context of obligation, “what becomes real always exceeds what was possible in advance.”<sup>9</sup> This, perhaps, the promise of the rhetorical orientation—that the impossible demand might be answered; that we might invent a vocabulary through which to bear witness to what has happened; that a voice might be heard amidst the noise; and that we might find a way to create a livable world in what would otherwise be an abyss.

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<sup>9</sup> Bernhard Waldenfels, *The Question of the Other*, (Hong Kong: The Chinese University Press, 2007), 34.

## **APPENDIX A**

### **GTMO SOP**

#### **Section III – Islam**

##### **16-14. Cultural Considerations**

- a) Do not disrespect the Koran (let it touch the floor, kick it, step on it).
  - i) Muslims even wash their hands before touching the Koran; non-Muslims should avoid touching a detainee's Koran whenever possible.
  - ii) Anyone disrespecting the Koran most likely will get no cooperation and could provoke a violent reaction from detainees.
- b) Friday is the Islamic holy day; prayer time is most sacred on this day
- c) Do not talk, play loud music in front of, or otherwise interrupt detainees during prayer or the call to prayer.
  - i) Interrupting a Muslim during prayer is considered inappropriate and he is unlikely to respond.
  - ii) Avoid mocking or imitating detainee's prayer.
- d) Do not eat or drink in front of detainees during the Islamic holy month of Ramadan.
  - i) Ramadan has significant religious importance.
  - ii) Detainees will be fasting during daylight hours.
- e) Do not ask about female members of a Muslim's family (e.g., wife, daughter, mother, sister, etc.); it is culturally unsuitable. Do not insist on asking the names of the women.
- f) Do not use the left hand to give a detainee food. Muslims use their left hand to clean

- themselves and it is culturally inappropriate to offer food with the left hand.
- g) Do not relate terrorism to Islam. It is inappropriate to equate any religion to such activity.
  - h) Do not point a finger at detainees as it is considered very disrespectful and derogatory.
  - i) Avoid using foul language as it displays a lack of composure.
  - j) Female guards and interpreters should not insist that the detainees make eye contact with them during interactions. Close contact with unrelated females is culturally inappropriate.
  - k) Detainees might cover their eyes or not talk to female guards. Such actions are not considered disrespectful but instead are considered a form of modesty by the detainee.



## **APPENDIX B**

### **18 U.S.C. § 2340**

- 1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
- 2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—
  - a. the intentional infliction or threatened infliction of severe physical pain or suffering;
  - b. the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
  - c. the threat of imminent death; or
  - d. the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality

## **APPENDIX C**

### **U.N. CONVENTION AGAINST TORTURE, ARTICLE 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

## BIBLIOGRAPHY

- Agamben, Giorgio. *Remnants of Auschwitz*. New York: Zone Books, 1999.
- Alleg, Henri. *The Question*. London: J. Calder, 195a8
- Althusser, Louis. In *Lenin and Philosophy, and Other Essays*. New York: Monthly Review Press, 2001.
- Annas, George J. "Force-feeding Prisoners and the Role of Physicians." *The Lancet* 374 (2009): 1737–1738.
- Arendt, Hannah. *Lectures on Kant's Political Philosophy*. Chicago: University of Chicago Press, 1989.
- Arendt, Hannah. *The Human Condition*. Chicago: University of Chicago Press, 1998.
- Aristotle. *The Basic Works of Aristotle*. Edited by Richard McKeon. New York: Random House, 1941.
- Ashcroft, John. "Letter to the President." *United States, Department of Justice, Office of the Legal Counsel*. February 1, 2002.
- Badiou, Alain. *Ethics: An Essay on the Understanding of Evil*. London: Verso Books, 2001.
- Beaumont, Gustave de, Alexis de Tocqueville, and Francis Lieber. *On the Penitentiary System in the United States, and Its Application in France*. Philadelphia: Carey, Lea & Blanchard, 1833.
- Berkowitz, Peter, ed. *Terrorism, the Laws of War, and the Constitution: Debating the Enemy Combatant Cases*. Stanford: Hoover Institution Press, 2005.
- Beverley, John. "The Question of Torture: Spanish Decadence and Our Own." *boundary 2* 34, no. 3 (2007): 189-205.
- Black, Edwin. "The Second Persona." *Quarterly Journal of Speech* 56 (1970): 109–119.
- Black, Edwin. *Rhetorical Criticism: A Study in Method*. Madison: University of Wisconsin Press, 1978.

- Blumenberg, Hans. "An Anthropological Approach to the Contemporary Significance of Rhetoric." in *After Philosophy: End or Transformation?*, edited by Kenneth Baynes, James Bohman, and Thomas A. McCarthy, 429-58. Cambridge: MIT Press, 1987.
- Borchelt, Gretchen. *Break Them down: Systematic Use of Psychological Torture by US Forces*. Cambridge: Physicians for Human Rights, 2005.
- Braten, Stein, ed. *Intersubjective Communication and Emotion in Early Ontogeny*. Cambridge: Cambridge University Press, 1998.
- Braten, Stein, ed. *On Being Moved: From Mirror Neurons to Empathy*. Amsterdam, The Netherlands: John Benjamins Publishing Company, 2007.
- Brockelman, Paul T. "Translator's Introduction." In *Speaking*, edited by Georges Gusdorf. Evanston: Northwestern University Press, 1965.
- Burke, Kenneth. *A Grammar of Motives*. Berkeley: University of California Press, 1969.
- Burke, Kenneth. *A Rhetoric of Motives*. Berkeley: University of California, 1969.
- Burke, Kenneth. *Language as Symbolic Action: Essays in Life, Literature, and Method*. Berkeley: University of California Press, 1966.
- Bush, George W. *Memorandum for the Vice President: Humane Treatment of al Qaeda and Taliban Detainees*. February 7, 2002.
- Bush, George W. *President Discusses War on Terror at National Endowment for Democracy*. October 6, 2005.
- Bush, George W. *Executive Order: Humane Treatment of al Qaeda and Taliban Detainees*. February 7, 2002.
- Bybee, Jay, "Memorandum for Alberto R. Gonzales Counsel to the President, August 1, 2002." In *The Torture Papers: The Road to Abu Ghraib*. Edited by Karen J. Greenberg and Joshua L. Dratel, 213-214. New York: Cambridge University Press, 2005.
- Bybee, Jay. "Memorandum for Alberto R. Gonzales Counsel to the President, and William J. Haynes II General Counsel for the Department of Defense, Re: Application of Treaties and Laws to Al Qaeda and Taliban Detainees." *United States, Department of Justice, Office of the Legal Counsel*. January 22, 2002, 9.
- Camus, Albert. "Helen's Exile." In *The Myth of Sisyphus: And Other Essays*. New York: Knopf, 1955.
- Caputo, John D. *Against Ethics: Contributions to a Poetics of Obligation with Constant Reference to Deconstruction*. Bloomington, IN: Indiana University Press, 1993.

- Caron, David D. "If Afghanistan Has Failed, Then Afghanistan Is Dead: 'Failed States' and the Inappropriate Substitution of Legal Conclusion for Political Description." In *The Torture Debate in America*, edited by Karen J. Greenberg, 214-222. Cambridge: Cambridge University Press, 2005.
- Casey, Edward S. "How to Get from Space to Place in a Fairly Short Stretch of Time: Phenomenological Prolegomena." In *Senses of Place*, edited by Steven Feld and Keith H. Basso, 13-52. Santa Fe: School of American Research Press, 1997.
- Casey, Edward S. "Between Geography and Philosophy." *Annals of the Association of American Geographers* 91 (2001): 683.
- Casey, Edward S. "Smooth Spaces and Rough-Edged Places: The Hidden History of Place." *The Review of Metaphysics* 51 (December 1997): 267-296.
- Casey, Edward S. "Smooth Spaces and Rough-Edged Places: The Hidden History of Place." *The Review of Metaphysics* 51, no. 2 (1997): 267-296.
- Central Intelligence Agency. *Human Resource Exploitation Training Manual—1983*. (CIA Training Manuals, National Security Archive, George Washington University, Washington, D.C.) <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB27/02-01.htm>.
- Central Intelligence Agency. *KUBARK Counterintelligence Interrogation*. Washington, DC, 1963. <http://www.parascope.com/articles/0397/kubark06.htm>.
- Charland, Maurice. "Constitutive Rhetoric: The Case of the Peuple Quebecois." *Quarterly Journal of Speech* 73, no. 2 (1987): 133-150.
- Clarke, Lynn. "Contesting Definitional Authority in the Collective." *Quarterly Journal of Speech* 91 (2005): 1-36.
- Cole, David. *Enemy aliens: double standards and constitutional freedoms in the war on terrorism*. New York: New Press, 2003.
- Comaroff, Joshua. "Terror and Territory: Guantanamo and the Space of Contradiction." *Public Culture* 19 (2007): 397.
- Conroy, John. *Unspeakable Acts, Ordinary People: The Dynamics of Torture*. Berkeley: University of California Press, 2001.
- Cox, J. Robert. "The die is cast: Topical and ontological dimensions of the locus of the irreparable." *Quarterly Journal of Speech* 68, no. 3 (1982): 227-239.
- Cusick, Suzanne. "'You are in a place that is out of the world': Music in the detention camps of the Global War on Terror." *Journal of the Society for American Music* 2 (2008): 1-26.
- Danner, Mark. *Torture and Truth: America, Abu Ghraib and the War on Terror*. New York: The New York Review of Books, 2004.

- Deetz, Stanley. "Conceptualizing Human Understanding: Gadamer's Hermeneutics and American Communication Studies." *Communication Quarterly* 26 (1978): 12-23.
- Deetz, Stanley. "Reclaiming the Subject Matter as a Guide to Mutual Understanding." *Communication Quarterly* 38 (1990): 226-243.
- Deetz, Stanley. *Democracy in an Age of Corporate Colonization*. Albany: State University of New York Press, 1992.
- Demchak, Chris. "Watersheds in Perception and Knowledge." In *Critical Reflections on Security and Change*, edited by Stuart Croft and Terry Terriff, 166-197. London: Frank Cass Publishers, 2000.
- Department of the Army, FMI 3-07-22, *Counterinsurgency Operations* (2004).
- Dershowitz, Alan. *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*. New Haven: Yale University Press: 2002.
- Diels, Herman and Walther Kranz eds. *The Older Sophists*. Indianapolis: Hackett Publishing Company, 2001.
- duBois, Page. *Torture and Truth*. New York: Routledge, 1991.
- Educing Information: Interrogation--science and Art: Foundations for the Future: Phase 1 Report*. (Washington, DC: Center for Strategic Intelligence Research, National Defense Intelligence College).
- Eisenman, Stephen F. *The Abu Ghraib Effect*. London: Reaktion Books, 2007.
- Ellmann, Maud. *The Hunger Artists: Starving, Writing, and Imprisonment*. Cambridge, MA: Harvard University Press, 1993.
- Elsa, Jennifer. *Detention of American Citizens as Enemy Combatants*. New York: Nova Science Publishers, 2008.
- Elshtain, Jean Bethke. "Reflection on the Problem of 'Dirty Hands.'" In *Torture: A Collection*, edited by Sanford Levinson, 77-91. New York: Oxford, 2004.
- "Ex-G.I. Writes About Use of Sex in Guantánamo Interrogations." *New York Times* (New York, NY), January 28, 2005.
- Faulkner, William. *Requiem for a Nun*. New York: Vintage Books, 1951.
- Fay, Major General George, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade*. [http://www.washingtonpost.com/wp-srv/nationi/documents/fay\\_report\\_8-25-04.pdf](http://www.washingtonpost.com/wp-srv/nationi/documents/fay_report_8-25-04.pdf).

- Foucault, Michel. "Truth and Juridical Forms." *Social Identities* 2 (1996): 327-342.
- Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. New York: Pantheon Books, 1973.
- Foucault, Michel. *The History of Sexuality: An Introduction*. Penguin Books, 1984.
- Gadamer, Hans Georg. "The Hermeneutics of Suspicion." In *Hermeneutics: Questions and Prospects*, edited by Gary Shapiro and Alan Sica. Amherst, MA: University of Massachusetts Press, 1988.
- Gadamer, Hans Georg. *Truth and Method*. New York: Continuum, 1989.
- Gaonkar, Dilip. "Object and Method in Rhetorical Criticism: From Wichelns to Leff and McGee." *Western Journal of Speech Communication* 54 (1990): 290-316.
- Gilbert, Paul. *New Terror, New Wars*. Washington, D.C.: Georgetown University Press, 2003.
- Gonzales, Alberto. *Memorandum for the President*. January 25, 2002.
- Goodson, Larry P. *Afghanistan's Endless War: State Failure, Regional Politics, and the Rise of the Taliban*. Seattle: University of Washington Press, 2001.
- Grassain, Stuart. "Prison Reform: Commission on Safety and Abuse in America's Prisons: Psychiatric Effects of Solitary Confinement." *Journal of Law & Politics* 22 (2006): 327.
- Greenberg, Karen J., Joshua L. Dratel, and Jeffrey S. Grossman. *The Enemy Combatant Papers*. Cambridge: Cambridge University Press, 2008.
- Greene, Ronald. "The Aesthetic Turn and the Rhetorical Perspective on Argumentation." *Argumentation and Advocacy* 35, no. 1 (1998): 19.
- Greenwald, Glenn. "Three Myths about the Detention Bill." *Salon*, December 16, 2011, Accessed April 14, 2013.  
[http://www.salon.com/2011/12/16/three\\_myths\\_about\\_the\\_detention\\_bill](http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill).
- Gross, Daniel M. "Introduction: Being-Moved: The Pathos of Heidegger's Rhetorical Ontology" In *Heidegger And Rhetoric*, edited by Daniel M. Gross and Ansgar Kemmann, Albany: SUNY Press, 2005.
- Guenther, Lisa. "Subjects Without a World? An Husserlian Analysis of SupermaDetention." *Human Studies* 34, no. 3 (2011): 257-276.
- Gusdorf, Georges. *Speaking*. Evanston: Northwestern University Press, 1965.
- Hammes, Thomas X. "Information operations in 4GW." In *Global Insurgency and the Future of Armed Conflict: Debating Fourth-Generation Warfare*, edited by Terry Terriff, Aaron Karp, and Regina Karp, 21-44. New York: Routledge, 2008.

- Haney, Craig. "Mental Health Issues in Long-term Solitary and 'Supermax' Confinement." *Crime & Delinquency*, 49 (2003): 127.
- Hariman, Robert. *Political Style: The Artistry of Power*. Chicago: University of Chicago Press, 1995.
- Hartnett, Stephen John. *Incarceration Nation: Investigative Prison Poems of Hope and Terror*. Walnut Creek, CA: AltaMira/Rowman & Littlefield, 2003.
- Hauser, Gerard A. "Demonstrative displays of dissident rhetoric: The case of prisoner 885/63." In *Rhetorics of Display*, edited by Lawrence Prelli, 229-254. Columbia, SC: University of South Carolina Press, 2006.
- Hauser, Gerard A. "Incongruous bodies: Arguments for personal sufficiency and public insufficiency." *Argumentation and Advocacy* 36, no. 1 (Summer 1999): 1-8.
- Hauser, Gerard A. *Prisoners of conscience: Moral vernaculars of political agency*. Columbia, SC: University of South Carolina Press, 2012.
- Hawhee, Debra. *Bodily Arts: Rhetoric and Athletics in Ancient Greece*. Austin: University of Texas Press, 2006.
- Heidegger, Martin. *Introduction to Metaphysics*. New Haven: Yale University Press, 2000.
- Heidegger, Martin. *Being and Time*, trans. John Macquarrie and Edward Robinson (London: SCM Press, 1962).
- Heidegger, Martin. *Basic Concepts of Aristotelian Philosophy*. Bloomington: Indiana University Press, 2009.
- Heidegger, Martin. *History of the Concept of Time: Prolegomena*. Bloomington: Indiana University Press, 1985.
- Heidegger, Martin. *Introduction to Metaphysics*. New Haven: Yale University Press, 2000.
- Heidegger, Martin. *Poetry, Language, Thought*. New York: Harper Collins, 1971.
- Heidegger, Martin. *Supplements: From the Earliest Essays to Being and Time and Beyond*. Albany: State University of New York Press.
- Heidegger, Martin. *The Basic Problems of Phenomenology*. Bloomington: Indiana University Press, 1988.
- Hilde, Thomas. "Information and the Torture Imagination," *South Central Review* 24, no. 1 (2007): 183-201.
- Hoffman, F.G. "Combating Fourth Generation Warfare." In *Global Insurgency*, edited by Terry Terriff, Aaron Karp, and Regina Karp, 177-199. New York: Routledge, 2008.



- Honigsberg, Peter Jan. *Our Nation Unhinged: The Human Consequences of the War on Terror*. Berkeley: University of California Press, 2009.
- Human Rights Watch. *Cold storage: super-maximum security confinement in Indiana*. New York: Human Rights Watch, 1997.
- Human Rights Watch. *No Blood, No Foul: Soliders' Accounts of Detainee Abuse in Iraq*. <http://www.hrw.org/en/reports/2006/07/22/no-blood-no-foul>.
- Hyde, Michael J. *The Call of Conscience: Heidegger and Levinas: Rhetoric and the Euthanasia Debate*. University of South Carolina Press, 2001.
- Icoboni, Marco. *Mirroring People*. New York: Farrar, Straus and Giroux, 2008.
- Ignatieff, Michael. *The Lesser Evil: Political Ethics in an Age of Terror*. Princeton: Princeton University Press.
- International Committee of the Red Cross. "Commentary: *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*." 1958.
- Ireland v. UK*, European Court of Human Rights. 1978.
- Kennedy, George. In *On Rhetoric: a Theory of Civic Discourse*. New York: Oxford University Press, 2007.
- King, Roy. "The Rise and Rise of Supermax: An American Solution in Search of a Problem?" *Punishment and Society* 1, no. 2 (1999): 163-86.
- Kleinman, Steven M. "KUBARK Counterintelligence Interrogation Review: Observations of an Interrogator – Lessons Learned and Avenues for Further Research." In *Educating Information: Interrogation Science and Art*, edited by Russell Swenson, 95-140. Washington D.C.: National Defense Intelligence College, 2006.
- Kraska, Peter B. *Militarizing the American Criminal Justice System: The Changing Roles of the Armed Forces and the Police*. Boston: Northeastern University Press, 2001.
- Laclau, Ernesto and Chantal Mouffe. *Hegemony and Socialist Strategy*. London: Verso, 1985.
- Lagouranis, Tony. *Fear Up Harsh: An Army Interrogator's Dark Journey Through Iraq*. New York: NAL Caliber, 2007.
- Leonnig, Carol D. and Dana Priest. "Detainees Accuse Female Interrogators." *Washington Post*, February 10, 2005.
- Levi, Primo. *Survival in Auschwitz*. New York: Collier, 1993.
- Levi, Primo. *The Drowned and the Saved*. Translated by Raymond Rosenthal. New York:

- Vintage International, 1989.
- Lévinas, Emmanuel. *Totality and Infinity: An Essay on Exteriority*. Pittsburgh: Duquesne University Press, 1969.
- Lingis, Alphonso. *The Community of Those Who Have Nothing in Common*. Bloomington, IN: Indiana University Press, 1994.
- Linnan, David. *Enemy Combatants, Terrorism, and Armed Conflict Law: a Guide to the Issues*. Westport, CT: Praeger Security International, 2008.
- Lockwood, Richard. *The Reader's Figure: Epideictic Rhetoric in Plato, Aristotle, Bossuet, Racine and Pascal*. Geneva: Librairie Droz, 1996.
- Luban, David. "Liberalism, Torture, and the Ticking Bomb." In *The Torture Debate in America*, edited by Karen Greenburg, 35-83. Cambridge: Cambridge University Press, 2006.
- Lyotard Jean-François and Jean-Loup Thébaud. *Just Gaming*. Manchester: Manchester University Press, 1985.
- Malkasian, Carter. "Counterinsurgency in Iraq." In *Counterinsurgency in Modern Warfare*, edited by Daniel Marston and Carter Malkasian, 287-310. New York: Osprey Publishing, 2008.
- Marcel, Gabriel. *Metaphysical Journal*. Chicago: Henry Regnery Co., 1952.
- Marks, Jonathan H. "The Silence of the Doctors." *The Nation* (New York, NY), December 26, 2005.
- McCoy, Alfred. "Mind Maze: The CIA's Pursuit of Psychological Torture." In *The United States and Torture: Interrogation, Incarceration, and Abuse*, edited by Marjorie Cohn, 25-52. New York: New York University Press, 2011.
- McCoy, Alfred. *A Question of Torture*. New York: Owl Books, 2006.
- McFate, Montgomery. "The Military Utility of Understanding Adversary Culture." *Joint Force Quarterly* 38 (2005): 48.
- McGee, Michael Calvin, "Choosing A Poros: Reflections on How to Implicate Isocrates in Liberal Theory." *(f)ragments*. Last modified July 6, 2001. [http://mcgeefragments.net/OLD/Choosing\\_Poros.html](http://mcgeefragments.net/OLD/Choosing_Poros.html).
- McGee, Michael Calvin. "In Search of the People: A Rhetorical Alternative." *Quarterly Journal of Speech Quarterly Journal of Speech* 61, no. 3 (1975): 235-249.
- McGee, Michael Calvin. "Isocrates: A Parent of Rhetoric and Cultural Studies." *(f)ragments*. Last modified June 3, 2008. <http://mcgeefragments.net/OLD/isocrate.htm>.

- McGee, Michael Calvin. "Text, Context, and the Fragmentation of Contemporary Culture." *Western Journal of Speech Communication* 54, no. 3 (1990): 274-289.
- McGee, Michael Calvin. "The 'Ideograph': A Link Between Rhetoric and Ideology." *Quarterly Journal of Speech* 66, no. 1 (1980): 1-16.
- Merleau-Ponty, Maurice. *Phenomenology of Perception*. New York: Routledge, 2002.
- Military Commissions Act of 2006*. S.3930, September 22, 2006.
- Mitchell, Gordon. "Public Argument-Driven Security Studies." *Argumentation and Advocacy* 39 (2002): 57-71.
- Mumford, Lewis. *Technics and Civilization*. New York: Harcourt, Brace, and World, 1963.
- Naidoo, Indres. *Island in Chains: Ten Years on Robben Island*. Middlesex: Penguin, 1982.
- Neal, Donice, ed. *Supermax Prisons: Beyond the Rock*. Lanham, MD: American Correctional Association, 2003.
- Nietzsche, Friedrich Wilhelm. *The Gay Science: With a Prelude in Rhymes and an Appendix of Songs*. Translated by Walter Arnold Kaufmann. New York: Vintage Books, 1974.
- Nietzsche, Friedrich. *Friedrich Nietzsche on Rhetoric and Language*. Edited by Sander L. Gilman, Carole Blair, and David J. Parent. New York: Oxford University Press, 1989.
- Nightingale, Andrea Wilson. *Spectacles of Truth in Classical Greek Philosophy: Theoria in its Cultural Context*. New York: Cambridge University Press, 2004.
- Nowak, Manfred and Elizabeth McArthur. *The United Nations Convention Against Torture: A Commentary*. Oxford: Oxford University Press, 2008.
- Obama, Barack. *Remarks by the President on National Security*. National Archives, May 2009.
- Okie, Susan. "Glimpses of Guantanamo — Medical Ethics and the War on Terror." *New England Journal of Medicine* 353, no. 24 (2005): 2529–2534.
- Otterman, Michael. *American Torture from the Cold War to Abu Ghraib and Beyond*. Melbourne: Melbourne University Press, 2007.
- Parry, John T. "Torture Warrants and the Rule of Law." *Albany Law Review* 71, no. 3 (2009): 885-906.
- Partnoy, Alicia. "Cuando Vienen Matando: On Prepositional Shifts and the Struggle of Testimonial Subjects for Agency." *PMLA* 125 (2006): 1665-1669.
- Partnoy, Alicia. *The Little School: Tales of Disappearance and Survival*. San Francisco: Midnight Editions, 1986.

- Pavliscek, Keith. "Human Rights in an Age of Terror." *Faith and Freedom* 26 (2007): 10-13.
- Peters, Edward. *Torture*. Philadelphia: University of Pennsylvania Press, 1986.
- Peters, John Durham. "'The Root of Humanity': Hegel on Language and Communication." In *Figuring the Self Subject, Absolute, and Others in Classical German Philosophy*, edited by David E. Klemm and Günter Zöller, 227-224. Albany: State University of New York Press, 1997.
- Peters, John Durham. "Locke, the Individual, and the Origin of Communication." *Quarterly Journal of Speech* 75 (1989): 393.
- Peters, John Durham. "Sharing thoughts or Responding to Otherness? Reply to Logue and Miller." *Critical Studies in Mass Communication* 13, no. 4 (1996): 373-380.
- Peters, John Durham. "Witnessing." *Media, Culture & Society* 23, no. 6 (2001): 707-723.
- Peters, John Durham. *Courting the Abyss*. Chicago: University of Chicago Press, 2005.
- Peters, John Durham. *Speaking into the Air: A History of the Idea of Communication*. Chicago: Chicago University Press, 1999.
- Physicians for Human Rights. *Aiding Torture: Health Professionals' Ethics and Human Rights Violations Revealed In the May 2004 CIA Inspector General's Report*. August 2009.
- Posner, Richard. *Not a Suicide Pact: The Constitution in a Time of National Emergency*. Oxford: Oxford University Press, 2006.
- Poulakos, John. "From the Depths of Rhetoric: The Emergence of Aesthetics as a Discipline." *Philosophy & Rhetoric* 40 (2007): 337.
- Poulakos, John. "Rhetoric and Civic Education: From the Sophists to Isocrates." In *Isocrates and Civic Education*, edited by Takis Poulakos and David J. Depew, 69-83. Austin: University of Texas Press, 2004.
- Poulakos, John. "Rhetoric, the Sophists, and the Possible." *Communication Monographs* 51 (1984): 215-224.
- Poulakos, John. "Special Delivery: Rhetoric, Letter Writing and the Question of Beauty." In *The Ethos of Rhetoric*, edited by Michael J. Hyde, 89-97. Columbia, S.C.: University of South Carolina Press, 2004.
- Poulakos, John. "The Components of Dialogue." *Western Speech* 38 (1974): 199-212.
- Poulakos, John. "The Sophists and the Possible." *Communication Monographs* 51 (1984): 217.
- Poulakos, John. *Sophistical Rhetoric in Classical Greece*. Columbia, SC: University of South Carolina Press, 1995.

- “President Signs Indefinite Detention Bill into Law.” *American Civil Liberties Union*. December 31, 2011. <http://www.aclu.org/national-security/president-obama-signs-indefinite-detention-bill-law>.
- Rancière, Jacques. *Disagreement: Politics and Philosophy*. Minneapolis: University of Minnesota Press, 1999.
- Rhodes, Lorna. *Total Confinement: Madness and Reason in the Maximum-Security Prison*. Berkeley: University of California Press, 2004.
- Rice, Condoleezza. “Iraq and U.S. Policy.” *Opening Remarks before the Senate Foreign Relations Committee*, Washington, D.C., October 19, 2005.
- Richards, Colonel Chet (USAF, Retired), Lieutenant-Colonel Greg Wilco (USA, Retired), and Colonel G. I. Wilson (USMC, Retired). “America in Peril: Fourth generation warfare in the twenty-first century.” In *Global Insurgency and the Future of Armed Conflict: Debating Fourth-Generation Warfare*, edited by Terry Terriff, Aaron Karp, and Regina Karp, 115-131. New York: Routledge, 2008.
- Ricoeur, Paul. *The Rule of Metaphor: Multi-disciplinary Studies of the Creation of Meaning in Language*. Toronto: University of Toronto Press, 1977.
- Robb, John. *Brave New War: The Next Stage of Terrorism and the End of Globalization*. Hoboken, NJ: John Wiley and Sons, 2007.
- Rorty, Richard. “Human Rights, Rationality and Sentimentality.” In *The Politics of Human Rights*. Edited by Obrad Savic, 67-83. New York: Verso, 1999.
- Rorty, Richard. *Philosophy and the Mirror of Nature*. Princeton: Princeton University Press, 1979.
- Rose, Nickolas. *Governing the Soul: The Shaping of the Private Self*. New York: Routledge, 1990.
- Sallis, John. *Being and Logos: Reading the Platonic Dialogues*. Cambridge University Press, 1996.
- Sands, Bobby. *One Day in My Life*. Cork, Ireland: Mercier Press, 2001.
- Sands, Philipe. *Torture Team: Rumsfeld’s Memo and the Betrayal of American Values*. New York: Palgrave Macmillan, 2008.
- Scarry, Elaine. “War and the Social Contract.” *University of Pennsylvania Law Review* (1999): 1257-1316.
- Scarry, Elaine. *On Beauty and Being Just*. Princeton: Princeton University Press, 1999.
- Scarry, Elaine. *The Body in Pain: The Making and Unmaking of the World*. New York: Oxford University Press, 1985.

- Schiappa, Edward. *Defining Reality: Definitions and the Politics of Meaning*. Carbondale: Southern Illinois University, 2003.
- Schmitt, Eric and Tim Golden. "Force-Feeding at Guantánamo Is Now Acknowledged." *The New York Times* (New York, NY), February 22, 2006.
- Schrag, Calvin O. *Communicative Praxis and the Space of Subjectivity*. Bloomington: Indiana University Press, 1986.
- Schrag, Calvin O. *Experience and Being: Prolegomena to a Future Ontology*. Evanston: Northwestern University Press, 1969.
- Schrag, Calvin O. *The Self after Postmodernity*. New Haven: Yale University Press, 1999.
- Schrag, Calvin. "Being in Pain." In *The Humanity of the Ill: Phenomenological Perspectives*. Edited by Victor Kestenbaum, 101-124. Knoxville, TN: University of Tennessee Press, 1982.
- Sennet, Richard. *The Fall of Public Man*. New York: W.W. Norton, 1974.
- Sherover, Charles M. *Are We in Time?: And Other Essays on Time and Temporality*. Evanston: Northwestern University Press, 2003.
- Sloop, John and James P. McDaniel, eds. *Judgment Calls: Rhetoric, Politics, and Indeterminacy*. Boulder: Westview Press, 1998.
- Smith, Clive Stafford. *Eight O'clock Ferry to the Windward Side: Seeking Justice in Guantanamo Bay*. New York: Nation Books, 2007.
- Soyinka, Wole. *The Man Died: Prison Notes of Wole Soyinka*. London: Africa Book Centre, Ltd., 1972.
- Stewart, John. *Language as Articulate Contact*. Albany: SUNY University Press, 1995.
- Steyn, Johan. "Guantanamo Bay: The Legal Black Hole." *The International and Comparative Law Quarterly* 53, no. 1 (2004): 1-15.
- Stoneman, Ethan. "Appropriate Indecorum Rhetoric and Aesthetics in the Political Theory of Jacques Rancière." *Philosophy and Rhetoric* 44, no. 2 (2011): 129-149.
- Taylor, Charles. *Sources of the Self: The Making of the Modern Identity*. Cambridge: Harvard University Press, 1989.
- Tarver, Julia. "Supplemental Declaration" in Majid Abdulla al Joudi, et al. v. George Bush et al., Civil Action No. 05-301 (GK), United States District Court for the District of Columbia. October 13, 2005.
- Toch, Hans. "The Contemporary Relevance of Early Experiments with Supermax Reform." *The Prison Journal* 83 (2003): 221-228.

- U.S. Department of Justice, Office of Legal Counsel. *Memorandum for William J. Haynes II, General Counsel of the Department of Defense, Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States*. March 14, 2003.
- U.S. House. 112<sup>th</sup> Congress, 1<sup>st</sup> Session. *H.R. 1540. National Defense Authorization Act for Fiscal Year 2012*. Washington: U.S. G.P.O, 2011.
- Ucko, David H. *The New Counterinsurgency Era: Transforming the U.S. Military for Modern Wars*. Washington, D.C.: Georgetown University Press, 2009.
- Urbina, Ian and Catherine Rentz. "Immigrants Held in Solitary Cells, Often for Weeks." *The New York Times* (New York, NY), March 24, 2013.
- Vivian, Bradford. *Being Made Strange: Rhetoric Beyond Representation*. Albany: State University of New York, 2004.
- Waldenfels, Bernhard. *The Question of the Other*. Hong Kong: The Chinese University Press, 2007.
- Waldron, Jeremy. "Torture and Positive Law: Jurisprudence for the White House." *Columbia Law Review* 105, no. 6 (2005): 1681-1750.
- Weizman, Eyal. "The Politics of Verticality: The West Bank as an Architectural Construction." In *Territories: Islands, Camps, and Other States of Utopia*. Edited by A. Frank, 65-101. (Berlin: Walther Konig, 2003).
- White, Eric C. *Karionomia: On the Will-to-Invent*. Ithica: Cornell University Press, 1987.
- Whitson, Steve and John Poulakos. "Nietzsche and the Aesthetics of Rhetoric." *The Quarterly Journal of Speech* 79, no. 2 (1993): 131-45.
- Wichelns, Herbert A. "The Literary Criticism of Oratory." *Studies in Rhetoric and Public Speaking in Honor of James Albert Winans*. New York: Century, 1962.
- Wittgenstein, Ludwig. *Philosophical Investigations*. Oxford: Blackwell Publishing, 2009.
- Yoo, John and Robert J. Delahunty. *Memorandum for William J. Haynes II General Counsel, Department of Defense, January 9, 2002*, January 9, 2002.
- Yoo, John. *Crisis and Command: The History of Executive Power from George Washington to George W. Bush*. New York: Kaplan Pub., 2009.
- Yoo, John. *War by Other Means: An Insider's Account of the War on Terror*, 1st ed. New York: Atlantic Monthly Press, 2006.
- Zarefsky, David. "Definitions." In *Argument in a Time of Change: Definitions, Frameworks, and Critiques*. Edited by James F. Klumpp, 1-11. Annandale, VA: National Communication Association, 1998.

Zarefsky, David. "Presidential Rhetoric and the Power of Definition." *Presidential Studies Quarterly* 34 (2004): 607-619.

Zarefsky, David. *President Johnson's War on Poverty: Rhetoric and History*. University: University of Alabama Press, 1986.